

1904-009  
Lee Co.

Chancery Causes: Admin. of A. J. Collier vs. Z. P. Smith &c

Folder 1a13

Pennington, A. J. Collier & Co], King, King Bros. Shoe Co], Scott,  
E. W. King & Co], Bell, Wranek, J. P. Bell & Co], Kohlhepp,  
Norton Grocery Co], Pocahontas Wholesale Grocery Co], Lula,  
Kalamazoo Corset Co], Kohlhepp & Lula], Kelly, Olinger,  
Collier & Kelly], Reese, Lawson, Gilly, Wood, Gilly, Orr,  
Ewing, Thompson, Waters, Pagan, Cator, Armstrong Cator & Co]

CA-Debt  
T-Business  
Property

Additional Information:

-Mercantile business



To the Hon. H. A. W. Skeen, Judge of the Circuit Court  
for Lee County, Virginia:

Humbly complaining your orator, Robert L. Pennington,  
Administrator of the estate of A. J. Collier, deceased, a  
citizen of Lee County, Virginia, ~~humbly complaining~~ would  
respectfully represent and show unto your honor:

That on the 6th day of March, 1903, your orator was  
duly appointed and qualified as the administrator of the  
estate of A. J. Collier, and for the faithful performance  
of his duty has just executed bond in your honor's said  
court in the penalty required.

That about the 20th, day of <sup>January</sup> ~~March~~, 1903, the said  
A. J. Collier was in the mercantile business in the town of  
Olinger, Lee County, Virginia, owning and possessing a stock  
of goods and doing business under the firm name of A. J.  
Collier & Co.

That on the said day last aforesaid the said stock  
of goods was invoiced, and he took into his firm one Z.P.  
Smith. The said Z. P. Smith contributed to the said firm  
a very small amount of goods, which he had in a little house  
in the town of <sup>Olinger</sup> ~~Byden~~, Lee County, Virginia, amounting, per-  
haps, to the value of \$50.00;

That the said Z. P. Smith and the said A. J. Collier  
continued in business under the firm name of A. J. Collier  
& Co., up to the 2nd, day of March, 1903.

That on the 28th day of February, 1903, the said  
A. J. Collier received a fatal wound from a pistol shot, and  
on the 2nd, day of March died intestate, and the owner of  
such interest in the said store as the invoice of his stock  
of goods bore to the stock of goods which the said Z. P. Smith  
contributed to the said firm as aforesaid, the said stock of  
goods the said A. J. Collier as invoiced as aforesaid, your



orator alleges amounts to the sum of \$ \_\_\_\_\_,

That the said firm of A. J. Collier & Co., are considerably indebted, and your orator believes and charges that the indebtedness of the said firm will amount to the sum of from \$500 to \$1000, and that the said stock of goods as aforesaid is all, or about all the assets which said firm of A. J. Collier & Co., have with which to pay the indebtedness thereof.

Your orator will further represent and show unto your honor that <sup>after</sup> the said A. J. Collier received said fatal shot as aforesaid, he was taken to the house of the said Z. P. Smith in the town of Olinger where he had been keeping his boarding place, and there he was kept until he died.

That the said Collier had upon his person when he was shot a considerable amount of money, and that the said Z. P. Smith took from the papers of the said A. J. Collier while he was thus sick and wounded in his house as aforesaid all the money that was upon his person, or among his papers, or found in his clothes except the sum of \$1.22.

Your orator will further represent and show unto your honor that on the 7th day of March, 1903, he went to the town of Olinger, Lee County, Virginia, to take charge of and have an inventory made of the estate of the said A. J. Collier and to have an appraisment made thereof by the appraisors appointed by your honor on the day aforesaid. To his surprise he found the said Z. P. Smith in possession of the said stock of goods denying the right of your orator as administrator as aforesaid of said estate to any claim or interest in said business:

At first he did not tell your orator <sup>by what authority</sup> ~~that~~ he was claiming the whole of the said interest in said business, but after talking to your orator in a round-about manner, and talking about not doing an open business, he went to his house and came back with three notes, one for \$200, due in six months, one for \$200



\* Your orator is further advised that the said D. J. Collins & Co., had some debts due them, ~~and~~ at the time of said Collins death, which the said Smith is collecting & receiving



*mine*  
due in ~~twelve~~ months, and one for \$600 due in two years, which notes were dated the 28th of February, 1903, *payable to A. J. Collier*

\* Your orator alleges believed and charges that the said Z. P. Smith executed the said notes payable to the said A. J. Collier without the said Collier's consent, and after the said Collier was *shot or* dead, and being in possession of the papers, books and clothes of the said A. J. Collier placed the said notes among the papers of the said Collier all for the purpose and intention on his part to defraud and cheat the estate of the said A. J. Collier out of all the said interest in said stock of goods as well as to cheat and defraud the creditors of the said A. J. Collier & Co.,

Your orator alleges that the said Z. P. Smith is insolvent, that he is worth absolutely nothing over and above what he would be allowed by the poorman's law., ~~but said notes does not waive the benefit of the Homestead exemption~~, and your orator alleges that if the said Z. P. Smith is suffered to remain in the possession of the said stock of goods, that he will convert the same to his own use, disposing of it and leaving nothing with which to pay the said notes, and your orator alleges that said notes were executed after the said Collier was dead, and the time for the payment thereof was *fixed in the future* ~~fixed~~ so as to give to the said Smith time and opportunity to dispose of the said goods and to squander the same so that nothing could be made with which to pay the indebtedness of the said firm.

Your orator will also represent and show unto your honor that the said Smith is now intending and preparing to remove the said stock of goods out of the county *in aid of* and for the purpose of cheating and defrauding the creditors of the said firm *as well as* and the estate of the said A. J. Collier.

Your orator is therefore advised that he is entitled to file this bill for the purpose of setting aside the said claim of the said Z. P. Smith and the recovery of the said stock of goods as well for the benefit of the said estate of the said



A. J. Collier as the creditors of the said firm of A. J. Collier & Co., and that he has a right to have a receiver appointed to take charge of the stock of goods, <sup>and debts due to said A. J. Collier</sup> and dispose of the same, and to have the partnership existing between the said Z. P. Smith and the said decedant settled, and the rights of the respective parties ascertained and settled, and to have an attachment issued to recover the said stock of goods, or an injunction awarded restraining the said Z. P. Smith from further disposing of the said stock of goods, for your orator alleges that the said Z. P. Smith has the said goods exposed for sale, and is making daily sales of the same and reducing the stock of goods without taking any account whatever of the proceeds of the sales thereof.

The prayer, therefore of your orator is, that the said Z. P. Smith be made a party defendant to this bill and that he be required to answer the same, but not under oath, that being expressly waived that an injunction be awarded against the said Z. P. Smith <sup>for</sup> further disposing of the said stock of goods, <sup>or receiving any of them from the house in which they are</sup> That a receiver be appointed to take charge of same and dispose of, or hold ~~the~~ the said goods subject to the further order of this court, and that if necessary an attachment be issued attaching said goods, or that <sup>order</sup> ~~an order~~ of possession be awarded such receiver as the court in its judgment <sup>deems</sup> ~~is~~ necessary ~~to appoint~~ for the protection of the said goods, that the partnership settlement be made between the said A. J. Collier and the said Z. P. Smith, and the rights of the respective parties ascertained, the creditors thereof assembled, and its assets and liabilities be ascertained, and that all other further and general relief be granted your orator that the nature of his cause and good conscience require, and he will as in duty bound ever pray &c.

*Remington Bros p.g.*



VIRGINIA, LEE COUNTY to-wit:

I, A. B. Munsey, clerk of the Circuit court for the county and state aforesaid, do hereby certify that Robert L. Pennington personally appeared before me and made oath in due form of law that the allegations in the foregoing bill in so far as made upon his own knowledge are true, and in so far as made upon the information derived from other he believes to be true.

Given under my hand this the 9th day of March, 1903.

A. B. Munsey Clerk



M. clk \$7.64  
 E. "A. 3.78  
 S. 15.00  
 W. 2.50  
 V.P. 6.98  
 Pff costs 1.50  
 Recd of R. L. Pennington 5.00  
 J. P. Smith. 42.46

Plaintiff's Costs  
 Not Recd -  
 Prnts - \$7.40  
 Jains Com. 18.00

Petitioner's Costs  
 Recd of R. L. Pennington  
 Atty - \$15.00

258  
 406  
 6.98

Robt. Pennington Allen.

vs 3/3 Bill in Chancery.

J. P. Smith.

1903. 1st April rules  
 Bill filed & pa 4 sent  
 + D.N.

" 2nd April rules D.N.  
 Confd + cause set for  
 hearing.

Pennington Bros.  
 ATTORNEYS AT LAW,  
 JONESVILLE AND PENNINGTON GAP VA.



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, ADMRS.

VS.

Z. P. SMITH.

PETITION OF KING BROTHERS SHOE COMPANY.

TO THE HON. H. A. W. SKEEN,

JUDGE OF THE CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Your petitioners, E. W. King and Anson King, would respectfully show unto your honor that they are whoesale merchants, doing business in Bristol, Tennessee, under the name of King Bros. Shoe Company; that on December 6th. 1902, they sold a bill of goods amounting to one hundred and fifty-two dollars and twenty cents (\$152.20 to A. J. Collier, doing business at Olinger, Lee County, Virginia, under the name of A. J. Collier & Company; that they file as exhibit one <sup>with</sup> of this petition, a statment of their account properly sworn to; they are informed, believe and therefore, charge that Z. P. Smith had formed some kind of a partnership with the said A. J. Collier at the time of the death of said Collier on March 2nd. 1903, <sup>which partnership was entered into for the purpose of hindering, delaying and defrauding the creditors of said Collier</sup> and the said Smith after the death of said Collier endeavored to get possession of the entire stock of goods of the said Collier for the purpose of hindering, delaying and defrauding the creditors of the said Collier, including your petitioners. They refer to the bill filed in the above styled cause of Robert L. Pennington Admr<sup>s</sup>. of the estate of A. J. Collier, deceased, vs. Z. P. Smith, and adopt the allegations of the said bill as far as ~~far as~~ the same is material, for the purposes of this petition. They say that no part of the debt <sup>due from</sup> of A. J. Collier, deceased, has been paid, but that the whole thereof is just, due and payable with interest from March 1st. 1903.

They therefore pray that they be allowed to file this as their petition in the aforesaid cause against the said Z. P. Smith and the



(2)

said Robert L. Pennington, Admr<sup>t</sup>. and that this cause be treated as a general creditors bill for the purpose of settling the controversy in said partnership with the said Smith and for the purpose of settling the estate of the said A. J. Collier, deceased, and ~~that~~ they pray that the said pennington, Admr<sup>t</sup>. and the said Smith be made parties defendant to this petition and be required to answer the same, but not on oath, and at the hearing hereof, your honor will decree the payment of your petitioners debt either out of the partnership assets that may be recovered in this cause or out of other assets that may be found to belong to the estate of said A. J. Collier and for such other, further and general relief as to equity may seem meet and the nature of the cause may require and your orators will ever pray &c.

*Irvin Blump*  
*For Petitioners*



E. W. KING.

STATEMENT

ANSON KING.

BRISTOL, TENN.,

190

M

POST OFFICE

To King Bros. Shoe Co., Dr.

WHOLESALE

BOOTS AND SHOES

606 STATE STREET.

INTEREST CHARGED ON ALL BILLS NOT  
PAID AT MATURITY.

1902

Dec 6

To Balance due

To Mdse.

Net March 1st  
Notary fee

\$152.20

15-  
\$152.35

STATE OF TENNESSEE,

SULLIVAN COUNTY.

Personally appeared before me, J. H. SWAN,

an acting Notary Public for said county,

E. W. King of the firm of  
King Bros Shoe Co

who made oath in due form of law,

that the foregoing account is just and correct, due and unpaid, after giving all  
just credits, to the best of his knowledge and belief. Sworn to and subscriber  
before me this the 11 day of Mar 1903, 189

J. H. Swan N. P.

E. W. King

"Ex 1" with Bill

Dunn + Slump - atty Big Stone Gap.

PROM PT PAYMENT ESTABLISHES GOOD CREDIT AND INSURES PROMPT DELIVERY  
OF GOODS.



D

"Ex 1."





Robt. L. Pennington, admsr.,  
vs { Petition of  
King Bros. Mfg Co.

J. P. Smith

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"Ex. 1."



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, ADMRS.,

VS.

Z. P. SMITH.

PETITION OF E. W. KING & COMPNY.

TO THE HON. H. A. W. SKEEN,

JUDGE OF THE CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Your petitioners, E. W. King, L. C. King and A. J. Scott, would respectfully show unto your honor that they are wholesale merchants, doing business in Bristol, Tennessee, under the name of E. W. King & Company; that on December 5th. 1902, they sold a bill of goods amounting to eighty-eight dollars and sixty-six cents (\$88.66) to A. J. Collier, doing business at Olinger, Lee County, Virginia, under the name of A. J. Collier & Company; that they file as ~~their~~ exhibit one <sup>with</sup> of this petition, a statment of their account properly sworn to. They are informed, believe and therefore, charge that X Z. P. Smith had fomed some kind of a partnership with the said A. J. Collier at the time of the death of said Collier on March 2nd. 1903, <sup>^ which Partnership was entered into for the purpose of hindering, delaying and defrauding</sup> and the said Smith after the death of said Collier endeavored to get possession of the entire stock of goods of the said Collier for the purpose of hindering, delaying and defrauding the creditors of the said Collier, including your petitioners. They refer to the bill ~~of~~ filed in the above styled cause of Robert L. Pennington, Admrs. of the estate of A. J. Collier, deceased, vs. Z. P. Smith, and adopt the allegations of the said bill as far as they same is material for the purposes of this petition. They say that no part of the debt <sup>due from</sup> of A. J. Collier, deceased, has been paid, but that the whole thereof is just, due and payable with interest from <sup>March 12th</sup> January 20th. 1903.

The exhibit of said Collier



(2)

They therefore, pray that they be allowed to file this as their petition in the aforesaid cause against the said Z. P. Smith and the said Robert L. Pennington, Admrs. and that this cause be treated as a general creditors bill for the purpose of settling the controversy in said partnership with the said Smith and for the purpose of settling the estate of the said A. J. Collier, deceased, and they pray that the said Pennington, Admr<sup>s</sup>. and the said Smith be made parties defendant to this petition and be required to answer the same, but not on oath; and at the hearing hereof your honor will decree the payment of your petitioners debt either out of the partnership assets that may be recovered in this cause or out of other assets that may be found to belong to the estate of said A. J. Collier and for such other, further and general relief as to equity may seem meet and the nature of the cause may require, and your orators will ever pray &c.

*John Slump*  
*For Petitioners*



Bristol, Tenn.,

3/11

190

3

MD

A. J. Coomer &amp; Co

IN ACCOUNT  
WITH

E. W. King &amp; Company,

WHOLESALE

Dry Goods and Notions.

E. W. KING

L. C. KING

O. J. SCOTT

608 STATE STREET.

1902

To Balance

Due 5

To Mdse Jan. 60.

88.66

Notary fee

25

\$ 88.91

STATE OF TENNESSEE.

SULLIVAN COUNTY.

Personally appeared before me, J. H. SWAN,

an acting Notary Public for said county,

of E. W. King &amp; Co

E. W. King of the firm

that the foregoing account is just and correct, due and unpaid, after giving all

just credits, to the best of his knowledge and belief. Sworn to and subscriber

before me this the

11<sup>th</sup>

day of

Mar 1903

J. H. Swan

N. P.

E. W. King

"Ex 1" with Rice

Swan &amp; Slump: attys. Big Stone Gap-





"Ex. 2."

RECORDED  
WITH  
E. W. Kinn & Company

JOHN BOND AND NOTIONS

Bristol Jan 10

120



Robt. L. Pennington attorn.  
vs. { Petition  
of C. W. King & Co.  
J. P. Smith.

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= Ex. 2. "



LEE CIRCUIT COURT.

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\*  
\*  
Robert L. Pennington, Admr., \*  
\*  
\*  
vs. \*  
\*  
\*  
Z. P. Smith \*  
\*  
\*\*\*\*\*

PETITION OF ARMSTRONG, CATOR & CO.,  
TO THE HONORABLE H. A. W. SKREEN, JUDGE OF THE  
CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

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YOUR PETITIONERS, William J. H. Waters, William H. Pagan, and Franklin P. Cator, would respectfully show unto your Honor that they are wholesale merchants, doing business in Baltimore, under the name and style of Armstrong, Cator & Co. That on August 19th, 1902 and September 18th, 1902, they sold two bills of goods amounting to Ninety Dollars and Thirty-two Cents, (\$90.32), to A. J. Collier, doing business at Norton, Virginia under the name and style of A. J. Collier & Co., and they file herewith as a part hereof, marked "Exhibit 1", a statement of their account, properly sworn to.

YOUR PETITIONERS would further state that a shorttime after they sold to A. J. Collier the above named bills of goods, that he moved his stock of goods from Norton, Virginia to Olinger, Virginia, and that they are informed, believe and therefore charge, that Z. P. Smith had formed some kind of partnership with the said A. J. Collier at the time of the said Collier's death on March 2nd, 1903 and that the said Smith after the death of the said Collier, endeavored to get possession of the entire stock of goods of the said A. J. Collier, for the purpose of



\*

Your petitioners would further represent and show unto Your Honor that the said A.J.Collier, in his life-time, and the said Z.P.Smith contriving and intending to hinder, delay and defraud the creditors of the said A.J.Collier and, especially, your petitioners, entered into an agreement whereby the said A.J.Collier was to turn over to the said Z.P.Smith all of the stock of goods which the said Collier had on hands at that time, and the said Smith executed to the said Collier some notes, one of which was made payable six months after date for two hundred dollars(\$200.00), one nine months after date for two hundred dollars(\$200.00), and one two years after date for six hundred dollars(\$600.00), which notes were drawn without interest, and were executed for the purpose of hindering, delaying and defrauding the creditors of A.J.Collier.

Your petitioners further represent that that the said Z.P.Smith is insolvent and unable to pay said notes, and your petitioners believe and charge that it was the purpose of the said Smith and Collier to so dispose of the said stock of goods as that the creditors of A.J.Collier could not make their debts out of said Collier.

Your petitioners allege further that the said Collier had no other means or estate by which he could pay his debts and the said stock of goods was the only assets which he had.



hindering and defrauding the creditors of the said Collier, including your petitioners.

\* YOUR PETITIONERS refer to the bill filed in the above styled Chancery Cause of Robert L. Pennington, Administrator of the estate of A. J. Collier, Deceased, vs. Z. P. Smith and adopt the allegations of the said bill as far as the same is material for the purpose of this petition.

Y YOUR PETITIONERS further state that no part of their debt against A. J. Collier, deceased has been paid, but that the whole thereof is just, due and payable, with interest from the 18th day of November, 1902. They, therefore pray that they be allowed to file this as their petition in the aforesaid cause against the said Z. P. Smith and the said Robert L. Pennington, administrator, and that this cause be treated as a general creditors bill, for the purpose of settling the said partnership with the said Z. P. Smith and for the purpose of settling the estate of the said A. J. Collier, deceased. And they pray that the said Pennington, Administrator, and the said Z. P. Smith be made parties defendant to this Petition, and be required to answer same, but <sup>not</sup> an answer on oath, and at the hearing thereof your Honor will decree the payment of your petitioners debt either out of the partnership assets that may be recovered in this cause, or out of other assets that may be found belonging to the estate of the said A. J. Collier and that such other further and general relief as to equity may seem meet and the nature of the case may require.

And your petitioner will ever pray.

Amthure  
C. T. Brown

P.Q.







DIRECT ORDERS TO FIRM.

POSITIVELY NO GOODS TAKEN BACK.

IF NOT INSURED, INSURE.

If this bill is not in all respects correct, we must be notified at once. Absolutely no change will be allowed at time of settlement.

Baltimore, 190  
M. J. Collier & Co.  
Norfolk Va  
Bought of

Folio \_\_\_\_\_

Sales Book \_\_\_\_\_

Sold by \_\_\_\_\_

Armstrong, Cator & Co.

Importers and Manufacturers of

Ribbons, Millinery, Straw Goods,

White Goods, Notions &c.

98 11 W. Baltimore St.

4, 6, 8 & 10 W. German St.

Terms

Accounts unpaid when due, subject to sight draft.

Aug 19 " 1902

|       |                      |     |       |      |
|-------|----------------------|-----|-------|------|
| 3     | Spools 1/2 Gr & Yls. | 35  | 105   |      |
| 100   | 1/2 ffr. 40 Yaff.    |     | 113   |      |
| 3     | " 40                 | 875 | 262   |      |
| 2     | " 22 "               | 75  | 150   |      |
| 2     | Dz Saxfs             | 75  | 150   |      |
| 1/6   | Gro " "              | 4   | 67    |      |
| 3/4   | Dz 2 cup Shirts      | 9   | 675   |      |
| 5 1/2 | " " "                | 6   | 7450  |      |
| 2 1/2 | " " "                | 450 | 11 25 |      |
| 2     | " Collar Buttons     | 37  | 75    |      |
| 2     | " Collars            | 80  | 160   |      |
| 1     | " " "                |     | 85    |      |
| 1     | " Suspenders         |     | 2     |      |
| 1/2   | " " "                | 4   | 2     |      |
| 2     | " Lad Hose           | 75  | 150   |      |
| 1     | " " "                |     | 225   |      |
| 3     | " 1/2 " "            | 75  | 225   |      |
| 1     | " " "                |     | 125   |      |
| 1     | " " "                |     | 225   |      |
| 2     | " " "                | 75  | 150   |      |
| 1     | Gro 2 cup Shirts     |     | 35    |      |
| 1     | Bx CO                |     | 40    | 5992 |

Aug 19 60 days Net.

2 doz 1/2 Hose. 45 90

Sept 18

1/2 Dz 2 cup Shirts 450 225

1 " over " 450

2 " Shirts & Draw 450 9 15 75

Total

7657



DIRECT ORDERS TO FIRM.

POSITIVELY NO GOODS TAKEN BACK.

IF NOT INSURED, INSURE.

If this bill is not in all respects correct, we must be notified at once. Absolutely no change will be allowed at time of settlement.

Baltimore, 190

M

Bought of

Folio

Sales Book

Sold by

Terms

Armstrong, Cator & Co.

Importers and Manufacturers of

Ribbons, Millinery, Straw Goods,

White Goods, Notions &c.

98 11 W. Baltimore St.

46, 8 & 10 W. German St.

Accounts unpaid when due, subject to sight draft.

Everyhand Bill to Value

For

96.57

Sept 18 60 Days Net.

2 Doz Shirts & Drawers

3.50

7

1 " Shirts

4.50

1 " Drill Drawers

2.25

13.75

90.32



State of Maryland, } ss.  
CITY OF BALTIMORE.

BE IT REMEMBERED, that on this 17<sup>th</sup> day of September A. D. 1903, before me, MURRAY HANSON, a Commissioner of the State of Virginia, residing in the City of Baltimore, State of Maryland, duly commissioned by the Executive Authority and under the laws of the State of Virginia and authorized to administer oaths and affirmations, and to take the

acknowledgments of deeds and other instruments of writing to be used and recorded therein, personally appeared William H. Pagon, who being duly sworn by me according to law, on his oath says, that he is a partner in the firm of Armstrong, Cator & Co, the said firm is composed of William J. H. Watters, William H. Pagon, Frank C. P. Cator & William W. Cator.

that the annexed account is correctly made out from the books of original entry, kept by said firm, that the said claim is just and true, as stated, and is unpaid and that he, deponent, knows the justness of said claim, that no part or parcel thereof has been received by said firm or by any or either of them or by any person for them directly or indirectly, to the best of his knowledge and belief, nor has any security or satisfaction been had for the same more than the credit stated and given on said account, that the full sum of \$90.32 is now justly due and owing with interest from the 1<sup>st</sup> day of January 1903, by

A. J. Gallie & Co to Armstrong, Cator & Co without any deduction or offset.

W. Pagon



Sworn to and Subscribed before me, this 17<sup>th</sup> day of September A. D. 1903, as witness my hand and Official Seal at Baltimore aforesaid.

Murray Hanson, Virginia  
A Commissioner for the State of

14 ST. PAUL STREET.

MURRAY HANSON,  
ATTORNEY AT LAW,  
Notary Public & Commissioner of Deeds,  
Room 4 Daily Record Building,  
S. W. Cor. St. Paul & Freetown Streets,  
BALTIMORE, MARYLAND.



Armstrong Colon & Co  
of Pelham  
Robert & Pennington  
and all  
Filed Sept 1st 1903  
A. B. Munney Clerk

"Ex. 4."

A. N. KILGORE.  
ATTORNEY AT LAW,  
NORTON, VA.



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, Adm'r

Vs

Z. P. S M I T H

}  
} Petition of J.P.Bell Co.  
} In Chancery.

TO THE HON. H. A. W. SKEEN, JUDGE OF THE CIRCUIT  
COURT FOR WISE COUNTY, VIRGINIA:

YOUR PETITIONERS, J. P. Bell, Lewis G. Bell and  
Wm.H. Wranek, would respectfully show unto your Honor that  
they are wholesale merchants doing business in Lynchburg,  
Virginia, under the name and style of J.P.Bell Company, and  
that on the 18th day of August, 1902, and on the 20th day of  
August, 1902 they sold and delivered two bills of goods a-  
mounting to \$83.53 to A. J. Collier, doing business at Nor-  
ton, Va., under the name and style of A. J. Collier & Co.,  
and that on October the 8th, 1902, the said A. J. Collier  
made a payment to your petitioners of \$25.00 on the said bills  
leaving a balance due your petitioners of \$58.53, and they  
file herewith, as a part hereof marked "Exhibit 1", a state-  
ment of that account properly proven, and pray that the same  
may be read and treated as part of this their petition.

Your petitioners would further state that a short  
time after the said sale to A. J. Collier, he moved his  
stock of goods from Norton to Olinger, Virginia, that they  
are informed, believe and therefore that a short time after  
the said Collier had moved his stock of goods to Olinger, Va.  
that he formed some kind of partnership with Z. P. Smith.

Your petitioners would further state that on the  
---- day of March, 1903, that the said J. A. Collier was



\* Your petitioners would further represent and show unto Your Honor that the said A.J.Collier, in his life-time, and the said Z.P.Smith contriving and intending to hinder, delay and defraud the creditors of the said A.J.Collier and, especially, your petitioners, entered into an agreement whereby the said A.J.Collier was to turn over to the said Z.P.Smith all of the stock of goods which the said Collier had on hands at that time, and the said Smith executed to the said Collier some notes, one of which was made payable six months after date for two hundred dollars(\$200.00), one nine months after date for two hundred dollars(\$200.00), and one two years after date for six hundred dollars(\$600.00), which notes were drawn without interest, and were executed for the purpose of hindering, delaying and defrauding the creditors of A.J.Collier.

Your petitioners further represent that the said Z.P.Smith is insolvent and unable to pay said notes, and your petitioners believe and charge that it was the purpose of the said Smith and Collier to so dispose of the said stock of goods as that the creditors of A.J.Collier could not make their debts out of said Collier. Your petitioners allege further that the said Collier had no other means or estate by which he could pay his debts and the said stock of goods was the only assets which he had.



shot and killed at Olinger, Virginia, and that the said Smith, after the death of said Collier, indeavored to get possession of the entire stock of goods of the said Collier for the purpose of hindering, delaying and defrauding the creditors of the said Collier including your petitioners.

\* Your petitioners refer to the bill filed in the above styled chancery cause of Robert L. Pennington, Adm'r of the estate of A. J. Collier, deceased, Vs Z. P. Smith, and adopt the allegations of the said bill in so far as the same are material for the purpose of this petition.

Your petitioners further state that no part of their debt against the said A. J. Collier deceased, has been paid except \$25.00 for which he has been given credit, and that your petitioners are entitled to recover from the estate of the said A. J. Collier, deceased, the sum of \$58.53 with interest thereon from the 20th day of August, 1902, till paid.

They therefore, pray that they be allowed to file this their petition in the aforesaid chancery cause against the said Z. P. Smith, and Robert L. Pennington Adm'r, and that this cause be treated as a general creditor's bill for the purpose of settling the said partnership with the said Z. P. Smith, and for the purpose of settling the estate of the said A. J. Collier, deceased.

And they pray that the said Robert L. Pennington, Adm'r, and the said Z. P. Smith be made parties defendant to this petition, and be required to answer the same, (but answer under oath is hereby expressly waived), and at the hearing thereof your Honor will decree the payment of your petitioners' debt, either out of the partnership assets that may be recovered in this cause, or out of other assets



-3-

that may be found belonging to the estate of the said A. J. Collier, deceased, and that such other further and general relief be given your petitioners as to equity may seem meet or the nature of the case may require.

And your petitioners will ever pray.

-----*A. M. Kilgore*-----p.q.  
*C. T. Dubucon*



Lynchburg, Va.,

Mass A J Collier Res  
Norton, Va

Bought of

J. P. BELL COMPANY

Jobbers of School Books



Manufacturing Stationers,

Blank Book Makers and Printers

816 MAIN STREET

TERMS CASH

|        |     |                          |        |        |
|--------|-----|--------------------------|--------|--------|
| 1902   |     |                          |        |        |
| Aug 18 | 24  | Johnson's Primers        | .08    | 1 92   |
| " "    | 24  | Merrill's Spellers       | .14    | 3 36   |
| " "    | 24  | S. S. Readers 1st.       | 17     | 4 08   |
| " "    | 24  | " " " 2nd                | 24     | 5 76   |
| " "    | 12  | " " " 3rd                | 31     | 3 72   |
| " "    | 12  | " " " 4th                | 40     | 4 80   |
| " "    | 12  | " " " 5th                | 40     | 4 80   |
| " "    | 6   | " " " 6th                | 40     | 2 40   |
| " "    | 12  | Ken. New Elem Arith      | 31     | 3 72   |
| " "    | 6   | " " " Pract              | 54     | 3 24   |
| " "    | 12  | Hydes " Lessons          | 24     | 2 88   |
| " "    | 12  | " " " Gram               | 39     | 4 68   |
| " "    | 12  | Maurey's Elem Geog       | 45     | 5 40   |
| " "    | 6   | " " Manual               | 1.02   | 6 12   |
| " "    | 12  | Lees Prim. U. S. Hist    | 40     | 4 80   |
| " "    | 6   | " " Brief                | 60     | 3 60   |
| " "    | 6   | Web. Prim. Dictionaries  | 41     | 2 46   |
| " "    | 19  | 5 Dtz #3578 Tablets      | 45     | 2 25   |
| " "    | 3   | " " 3524 "               | 43     | 1 29   |
| " "    | 2   | " " 2469 "               | 40     | 80     |
| " "    | 2   | " " 4278 "               | 37 1/2 | 75     |
| " "    | 4   | Gro. Penny Tablets       | 1.00   | 25     |
| " "    | 1   | Dtz #1348 Comp. Books    | 35     | 35     |
| " "    | 1   | " " 1018 "               |        | 75     |
| " "    | 1   | " " 1921 Magenta Tablets |        | 40     |
| " "    | 1   | Gro. 140 Pencils         |        | 90     |
| " "    | 1   | Box Sponges (100)        |        | 75     |
| " "    | 2   | Dtz #204 Book Bags       | 85     | 1 70   |
| " "    | 1   | Hoosier Files            |        | 2 25   |
| " "    | 1   | Gro. #160 Bells Pens     |        | 60     |
| " "    | 1/2 | " " 106 Pass Books       | 1.40   | 70     |
| " "    | 1   | Dtz #3371 Memo. "        |        | 35     |
| " "    | 1   | " " 602 bod. Pencils     |        | 45     |
| " "    | 1   | " Watch Fobs             |        | 85     |
| " "    | 1   | " #110 Union Erasers     |        | 40     |
| Oct 8  |     | By Cash                  |        | 8353   |
|        |     | Balance due              |        | 2500   |
|        |     |                          |        | \$5853 |



STATE OF VIRGINIA—City of Lynchburg, to-wit:

I, JOHN A. FAULKNER, a Notary Public for the City aforesaid, in the State of Virginia.

do certify that

*J. M. Dulaney Bookkeeper for*  
*J. P. Bell Co, of which J. P. Bell and Wm. W. Wrenn*  
*are surviving partners of themselves*  
*and Lewis E. Bell deceased* this day personally

appeared before me in my City aforesaid and made oath that, to the best of affiant's belief,

ha *a* a claim against

to the amount of

(\$ *5853* )

*J. P. Bell Co*  
*A. J. Collins Co*  
*Fifty eight & 53/100*

Dollars

*J. P. Bell Co*

claim interest thereon

as follows:

*From October 18th 1902*  
*until paid*

: and that the paper

hereto attached is a true account of said claim.

Given under my hand and Notarial Seal, this *16th* day of *Sept* 190*2*

*John A. Faulkner*  
Notary Public.

No tax required on above seal under Virginia Statute.

*John A. Faulkner*  
Notary Public.



"032"





Lynchburg, Va.,

Miss A. J. Collier & Co

Norton Va

Bought of

J. P. BELL COMPANY

Jobbers of School Books



Manufacturing Stationers,

Blank Book Makers and Printers

816 MAIN STREET

TERMS CASH

1902

|     |    |                            |          |       |
|-----|----|----------------------------|----------|-------|
| Aug | 18 | 24 Johnsons Primers        | @ 8      | 1 92  |
| "   | "  | 24 Merrill's Spellers      | " 14     | 3 36  |
| "   | "  | 24 Step. Stones & Readers. | " 17     | 4 08  |
| "   | "  | 24 " " 2 <sup>nd</sup> "   | " 24     | 5 76  |
| "   | "  | 12 " " 3 <sup>rd</sup> "   | " 31     | 3 72  |
| "   | "  | 12 " " 4 <sup>th</sup> "   | " 40     | 4 80  |
| "   | "  | 12 " " 5 <sup>th</sup> "   | " "      | 4 80  |
| "   | "  | 6 " " 6 <sup>th</sup> "    | " "      | 2 40  |
| "   | "  | 12 Ken. New Elem. Arith    | " 31     | 3 72  |
| "   | "  | 6 " " Pract. "             | " 54     | 3 24  |
| "   | "  | 12 Hydes " Lessons         | " 24     | 2 88  |
| "   | "  | 12 " " Gram.               | " 39     | 4 68  |
| "   | "  | 12 Maurey's Elem Geog.     | " 45     | 5 40  |
| "   | "  | 6 " " Man'l "              | " 1 02   | 6 12  |
| "   | "  | 12 Lee's Prim. Hist. U.S.  | " 40     | 4 80  |
| "   | "  | 6 " " Brief " " "          | " 60     | 3 60  |
| "   | "  | 6 Webster's Prim Dict.     | " 41     | 2 46  |
| "   | 20 | 50g Tablets                | " 45     | 2 25  |
| "   | "  | 3 " "                      | " 43     | 1 29  |
| "   | "  | 2 " "                      | " 40     | 80    |
| "   | "  | 2 " "                      | " 37 1/2 | 75    |
| "   | "  | 1/4 Gro. " @ 1 25 per Gro. |          | 25    |
| "   | "  | 1 Doz Comp. Books @ 35     |          | 35    |
| "   | "  | 1 " " "                    |          | 75    |
| "   | "  | 1 " Magenta Tablets        |          | 40    |
| "   | "  | 1 Gro Pencils              |          | 90    |
| "   | "  | 1 Box (100) Sponges        |          | 75    |
| "   | "  | 2 Doz Book Bags @ 85       |          | 1 70  |
| "   | "  | 1 " Hoosier Files          |          | 2 25  |
| "   | "  | 1 Gro. Bell's Pens         |          | 60    |
| "   | "  | 1/2 " Pass Books @ 1 40    |          | 70    |
| "   | "  | 1 Doz Memo "               |          | 35    |
| "   | "  | 1 " Col. Pencils           |          | 45    |
| "   | "  | 1 " Watch Fobs             |          | 85    |
| "   | "  | 1 " Union Erasers          |          | 40    |
| Oct | 8  | By Cash - (check)          |          | 83 53 |
|     |    | Balance                    |          | 2 500 |
|     |    |                            |          | 5 853 |

To Kegan & Alley  
Norton Va



Exhibit (1)



J. P. Bell Company  
vs. Petition  
Robert L. Pinnington et al  
Filed Sept 1st 1903  
A. B. Murrey Clerk

"Ex. 6."

A. N. KILGORE,  
ATTORNEY AT LAW,  
NORTON, VA.



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, Adm'r

Vs

Z. P. Smith.

}  
The petition of the  
Norton Grocery Company.  
}

TO THE HON. H.A.W.SKEEN, JUDGE OF THE CIRCUIT COURT  
FOR LEE COUNTY VIRGINIA.

Your petitioner, the Norton Grocery Company, a corporation organized and existing under the laws of the state of Virginia, would respectfully show unto your Honor that it is engaged in the business of wholesale merchants, and that on the 10th day of January, 1903 it sold and delivered one bill of goods amounting to \$33.81 to A.J. Collier, doing business as a retail merchant at Olinger, Lee county, Virginia, and it files herewith, as apart hereof marked "Exhibit 1", a statement of its account, properly sworn to, and prays that the same may be read and treated as a part of this its petition.

Your petitioner would further state that a short time after it sold to the said A.J. Collier the above named bill of goods it was informed, and believes, and therefore charges that at the time it sold and delivered the said goods, that Z.P. Smith and the said Collier had formed some kind of a partnership.

Your petitioner would further state that on the --- day of March, 1903 the said A. J. COLLIER was shot and killed at Olinger, Va., and that immediately after the



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\* Your petitioners would further represent and show unto Your Honor that the said A.J.Collier, in his lifetime, and the said Z.P.Smith contriving and intending to hinder, delay and defraud the creditors of the said A.J.Collier and, especially, your petitioners, entered into an agreement whereby the said A.J.Collier was to turn over to the said Z.P.Smith all of the said stock of goods which the said Collier had on hands at that time, and the said Smith executed to the said Collier some notes, one of which was made payable six months after date for two hundred dollars(\$200.00), and one nine months after date for two hundred dollars(\$200.00), and one two years after date for six hundred dollars(\$600.00), which notes were drawn without interest, and were executed for the purpose of hindering, delaying and defrauding the creditors of A.J.Collier.

Y  
S. Your petitioners further represent that the said ~~xxxx~~ Z.P.Smith is insolvent and unable to pay said notes, and your petitioners believe and charge that it was the purpose of the said Smith and said Collier to so dispose of the said stock of goods as that the creditors of A.J.Collier could not make their debts out of said Collier.

Your petitioners allege further that the said Collier had no other means or estate by which he could pay his debts and the said stock of goods was the only assets which he had.



death of said Collier the said Z. P. SMITH endeavored to get possession of the entire stock of goods of the said A.J. Collier for the purpose of hindering, delaying and defrauding the creditors of the said Collier including your petitioner.\* Your petitioner refers to the bill filed in the above styled chancery cause, of Robert L. Pennington, Adm'r of the estate of A. J. Collier, deceased, Vs Z. P. Smith and adopts the allegations of said bill in so far as they same are material for the purpose of this petition.

Your petitioner further states that no part of its debt against the said A.J. Collier, deceased,, has been paid but the whole thereof is just, due and unpaid, with interest thereon from the 10th day of January, 1903 until paid. Therefore your petitioner prays that it be allowed to file this its petition in the aforesaid cause against Z. P. Smith and Robert L. Pennington, Adm'r, and that this cause be treated as a general creditor's bill for the purpose of settling the said partnership with the said Z.P.Smith, and for the purpose of settling the estate of the said A.J. Collier deceased, and it prays that Robert L. Pennington and Z.P. Smith be made parties defendant to this petition, and be required to answer the same, but answer under oath(as is hereby waived) and that at the hearing thereof your honor will decree the payment of your petitioner's debt out of the partnership assets that may be recovered <sup>in</sup> by this cause, or out of the other assets that may be found belonging to the estate of the said A.J. Collier,



-3-

and <sup>for</sup> such other further and general relief as to equity  
may seem meet or the nature of the case may require.

And your petirioner will ever pray.

A. N. Wilson P.O.  
C. T. Duncom



FOLIO.....

ALL ACCOUNTS MUST BE SETTLED MONTHLY BY CASH OR NOTE

Norton, Va.

Mar 2 1903

M J Collier

Olinger

OFFICERS

DAVID E. JOHNSTON  
President  
J. M. ALLEN  
Vice-President  
J. FRANK SURFACE  
Gen. Man. and Treas.  
JNO. L. WRAY  
Secretary

BOUGHT OF

NORTON GROCERY CO.  
Wholesale Grocers

DIRECTORS

DAVID E. JOHNSTON  
H. W. STRALEY  
J. F. SURFACE  
W. W. HUFF  
C. S. NELSON  
J. M. ALLEN

Jan 10 made net,

33 81



*Exhibit 11*

|                                                                                                |                                                                             |                                     |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------|
| THE<br>NORTON<br>GROCERY<br>CO.<br>WHOLESALE<br>GROCERS<br>100<br>N. 1st St.<br>St. Louis, Mo. | WHOLESALE GROCERS<br>NORTON GROCERY CO.<br>100 N. 1st St.<br>St. Louis, Mo. | 100<br>N. 1st St.<br>St. Louis, Mo. |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------|





# NORTON GROCERY COMPANY,

## WHOLESALE GROCERS.

OFFICE & WAREHOUSE:

5TH STREET AND PARK AVE.

Brandon Printing Co., Nashville.

Terms 10 DAYS  
30 DAYS NET.

Norton, Va. January 10, 1903.

Sold to

Mr. A. J. Collier,  
Olinger, Virginia.

|                                   |       |       |                |
|-----------------------------------|-------|-------|----------------|
| 60 lbs. 2 lb. Granulated Sugar,   | 60    | 5.40  | 3.24           |
| 1 case Arbuckles Coffee, 60 lbs., | 60    | 1008  | 6.11           |
| 1 case Potted Ham,                | 4     | 45    | 1.80           |
| 1 case Corned Beef,               | 2     | 135   | 2.70           |
| 1 box Crescent Crackers,          | 23    | 5     | 1.15           |
| 1 box L R Sugar Cakes,            | 22    | 6 1/2 | 1.43           |
| 1 keg Soda,                       | 112   | 1.75  | 1.75           |
| 1 pail Queen Creams,              | 30    | 8 1/2 | 2.55           |
| 25 lbs. Rice,                     | 25    | 5 1/2 | 1.38           |
| 20 sacks Trojan Flour,            | 2 1/2 | 390   | 9.75           |
| 3 sacks Salt,                     | 3     | 65    | 1.95           |
|                                   |       |       | <u>\$33.81</u> |

Duplicate Invoice.

VIRGINIA, WISE COUNTY, EO-WIT:

This day personally appeared  
before me, E. H. Higdon a Notary public in and for  
the county and state aforesaid, The Norton Grocery Company  
a Corporation Organized and existing under the laws of the  
State of Virginia, by John L. Wray, its secretary, and made  
oath that the foregoing account is just due and unpaid.

Given under my hand this the 15th day of Sept. 1903.

My commission expires the 29 day of Aug 1906.

E. H. Higdon N. P.



022° 51'

1' 30

2 00

2 small trees

0' 30

3 1/2 300

50 small trees

1' 20

3 1/2 1/2

50 trees

5' 00

0 1/2

1 tall tree

1' 40

55 1/2

1 box of small trees

1' 10

55 0

1 box of small trees

5' 10

3 1/2

1 small tree

1' 00

0 1/2

1 small tree

0' 11

00 1000

1 small tree

2' 30

00 0

1 small tree

1 small tree



Norton Grocery Co.

vs. Petition

Robert L. Pennington et al.

Filed Sept 1st 1903

A B Munnery Clk

"Ex. 7."

A. N. KILGORE.  
ATTORNEY AT LAW.  
NORTON, VA.



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, Adm'r

VS.

Z. P. S M I T H ,

)  
) THE PETITION OF  
) Pocahontas Wholesale Gro. Co.  
)  
) Kalamazoo Corset Company.  
)  
) Kahlhepp & Iula.

TO THE HON. H. A. W. SKEEN, JUDGE OF THE CIRCUIT  
COURT FOR LEE COUNTY, VIRGINIA.

Your petitioners, the Pocahontas Wholesale Grocery Company, a corporation organized and existing under the laws of the state of Virginia, the Kalamazoo Corset Company, a Corporation organized and existing under the laws of the state of Michigan, Fred Kohlhepp and James P. Iula wholesale merchants doing business under the firm name and style of Kohlhepp & Iula, would state unto your Honor as follows, to-wit: that on the --- day of March, 1903, that A. J. Collier and G. B. Kelly were doing business as retail merchants in Norton, Virginia, under the firm name and style of Collier & Kelly, and that the said firm of Collier & Kelly is indebted to each of your petitioners for goods, wares and merchandise by them respectively sold and delivered to the said Collier and Kelly, in the respective sums hereinafter set forth, together with interest from the date hereinbelow given, which said respective sums became due to your petitioners upon the respective <sup>dates</sup> ~~dates~~ from which interest began to run as hereinbelow set forth, to-wit:



| Name of Creditors.            | Am't Debt. | Date Int.Begn |
|-------------------------------|------------|---------------|
| Pocahontas Wholesale Gro..Co. | \$26.35    | Aug.8,1902    |
| Kohlhepp & Iula               | 24.18      | Jul.1,1902    |
| Kalamazoo Corset Company      | 23.25      | Jul.26, 1902  |

Your petitioners further states that your petitioners and each of them sold and delivered, respectively, the said lots of goods, wares and merchandise to the said Collier & Kelly at their special instance and request, and for the same the said Collier & Kelly agreed and promised to pay to your petitioners respectively, the several sums or amounts as above set forth, at the times set forth respectively, but that the said Collier & Kelly, although often requested, have refused, neglected and failed to pay your petitioners, or any of them, the said several sums of money, with interest, or any part thereof; that the above said several amounts as set forth, respectively, are just, due and unpaid, respectively, and that your petitioners are intitled to recover the said several amounts above set forth, respectively, from the defendants.

Your petitioners would further state that they each, respectively, instituted notice of motion for judgment in the County Court of Wise County, against the defendant on each of the above claims, and that process was duly served in Wise County, on the defendant G. B. Kelly, and process was returned not executed on A.J.Collier.

Your petitioners states that at the March term of the County Court for Wise County, they each respectively, took judgment against G. B. Kelly, one of the defendants, for the amounts of the claims as above set forth; and that upon each of the respective judgments executions have been



issued against the said G. B. Kelly, and have been returned by the sheriff of Wise County marked not satisfied, (no property found). *and that G. B. Kelly is insolvent that their suits ~~are~~ <sup>are</sup> ~~aborted~~ <sup>aborted</sup> so as to collect*

Your petitioners further state, believe and charge that the said G. B. Kelly did not own any interest in the mercantile business conducted under the firm name and style of Collier & Kelly, but that the said Kelley's name was only used for the purpose deceiving each of your petitioners, respectively, and the other creditors of the said A. J. Collier.

Your petitioners would further state that a short time after the said sale of the said good, wares and merchandise to the said Collier & Kelly, that the said Collier moved his stock of goods from Norton to Olinger, Virginia, but that the said Collier led your petitioners, respectively to believe, at the time, that he was only moving his stock of goods to Big Stone Gap, Virginia,

Your petitioners would further state that soon after the said Collier moved the stock of goods, wares and merchandise, from Norton to Olinger, Virginia, that he formed some kind of partnership with one Z. P. Smith, and that a short time after he had formed the said partnership, that the said A. J. Collier was shot and killed at Olinger, Va., and that the said Smith, soon after the death of the said Collier endeavored to get possession of the entire stock of good of the said Collier for the purpose of hindering, delaying and defrauding the creditors of the said Collier, and the said Collier & Kelly including your petitioners, respectively.

Your petitioners refers to the bill filed in the above styled chancery cause, of Robert L. Pennington, Adm'r of the estate of A. J. Collier, deceased,



\* Your petitioners would further represent and show unto Your Honor that the said A.J.Collier, in his life-time, and the said Z.P.Smith contriving and intending to hinder, delay and defraud the creditors of the said A.J.Collier and, especially, your petitioners, entered into an agreement whereby the said A.J.Collier was to turn over to the said Z.P.Smith all of the stock of goods which the said Collier had on hands at that time, and the said Smith executed to the said Collier some notes, one of which was made payable six months after date for ~~two~~ two hundred dollars(\$200.00), one nine months after date for two hundred dollars(\$200.00), and one two years after date for six hundred dollars(\$600.00), which notes were drawn without interest, and were executed for the purpose of hindering, delaying and defrauding the creditors of A.J.Collier.

Your petitioners further represent that the said Z.P.Smith is insolvent and unable to pay said notes, and your petitioners believe and charge that it was the purpose of the said Smith and Collier to so dispose of the said stock of goods as that the creditors of A.J.Collier could not make their debts out of said Collier.

Your petitioners allege further that the said Collier had no other means or estate by which he could pay his debts and the said stock of goods was the only assets which he had.



versus Z. P. Smith and adopt the allegations of the said bill in so far as the same are material for the purpose of this petition.

\* Your petitioners would further state that no part of their debts against the said Collier & Kelly has been paid and that your petitioners are entitled to recover from the estate of the said A. J. Collier, deceased, the amount of their respective claims, with interest thereon from the dates, as above set forth until paid. Your petitioners file herewith a copy of their accounts, respectively, and pray that the same may be read and treated as part of this their petition, marked "Exhibits 1, 2, & 3", and they therefore pray that they be allowed to file this their petition in the aforesaid chancery cause against the said Robert L. Pennington and Z. P. Smith, and that this cause be treated as a general creditor's bill for the purpose of settling the partnership with the said Z. P. Smith, and for the purpose of settling the estate of the said A. J. Collier, deceased, and they pray that the said Robert L. Pennington, administrator, and Z. P. Smith be made parties defendant to this bill, and be required to answer the same (but answer under oath is hereby expressly waived), and that at the hearing thereof your Honor will decree the payment of your petitioners' debts respectively, either out of the partnership assets that may be recovered in this cause, or out of the assets that may be found belonging to the estate of the said A. J. Collier, deceased; and that such other further and general relief be given your petitioners as to equity may seem meet or the nature of the case may require.

And your petitioner will ever pray.

*E. Polson*  
-----*A. S. Halgore*-----p.d.



# Statement

folio

Collier and Kelly  
Morton, Va.

In account with

Kohlhepp & Iula

Formerly of

Passalacqua Fruit Co.

Louisville Ky

190

1902

July 1 To Bal  
To mdse

24.18

Virginia:

In the Clerk's office of the County  
Court of Wise County.

J. C. A. Johnson Deputy for W. E.  
Kellogg Clerk of the County Court for  
said County Certifies that the foregoing  
is a true copy of the account on  
file in said office in the case of  
the Kohlhepp & Iula vs Collier & Kelly  
Gwin under my hand this 3<sup>rd</sup> day  
Feb. 1903

W. E. Kellogg Clerk  
By J. C. A. Johnson D.C.



Kohlhepp & Sula

re of acct

Callies & Kelly

111

Lie Co



Kalamazoo Mich  
Jan. 30, 1903.  
Collie & Kelly  
Norton, <sup>77<sup>a</sup></sup>  
In account with  
Kalamazoo Corset Co  
Sole makers of F.C. and American  
Beauty Corsets  
1902 Trade mark  
May 26, To Indue 60 days net  $\frac{8}{26}$  23.25-

Virginia:

In the Clerk's office of the County Court  
of Wise County

I, C. A. Johnson Deputy Clerk for  
W. E. Kilgore, Clerk of said Court  
Certify that the above is a true  
copy of the account on file in  
said office in the case of  
Kalamazoo Corset Co. vs Collie  
& Kelly

Given under my hand this the  
3<sup>rd</sup> day of Feb. 1903

C. A. Johnson oc  
For W. E. Kilgore, Clerk



Kalamazoo Credit Co

vs { acct

Callier & Kelly

See Co



Statement.

Collier & Kelly  
Morton, Va.

In account with Pocahontas Wholesale Grocery Company  
Debits

Apr. 1 Indue 855-

10.36

May 22 11.75-

10.36

June 18 30.72

13.52

85-26

Balance 26.35-

Credits

Apr. 29 OK 1891

July 21 " 20 00

Aug 8 " 20 00

Balance 26.35-

85-26

Virginia: In the Clerk's Office of the  
County Court of Wise County  
I, C. A. Johnson Deputy for W. E. Keigom  
Clerk of said Court certify that the foregoing  
is a true copy of the account on file in said  
office in case of Pocahontas Wholesale  
Grocery Co vs Collier & Kelly

Given under my hand this Feb. 5- 1903

W. E. Keigom Clerk

By C. A. Johnson DC



Peachtree Wholesale Gro Co

rs of Acet

Collins & Kelley

(11)

N. 9.

Lee Co



Preahontas Wholesale Grocers.

et al

vs. Petitioners

R. L. Perington et al.

Filed Sept 1st 1903.

A. B. Murray Clerk

"Ex. 8."

"Ex. 9."

"Ex. 10."

A. N. KILGORE,  
ATTORNEY AT LAW,  
NORTON, VA.



*Jenesville, Virginia,*

*1899.*

To the honorable H. A. W. Skean, judge of the circuit court  
for Lee County Virginia.

The answer of Z. P. Smith, to a bill of complaint exhibited against him in this honorable court, by R. L. Pennington administrator of the estate of A. J. Collier deceased.

Reserving the benefit of all just exceptions to said bill of complaint, for answer thereto, or to so much thereof as he is advised is material for him to answer, answering he says;

Ist, That he supposes it is true that the said complainant on the 6th day of March 1903, was duly appointed and qualified as the administrator of the estate of A. J. Collier deceased. and that he executed bond for the faithful performance of his duties as such as administrator.

2nd, That it is also true, that about the 20th day of January 1903 the said A. J. Collier was in the mercantile business in the town of Olinger, Lee County, Virginia, owning and possessing a stock of goods, and doing business under the firm name of A. J. Collier & Co.

3d, That it is also true, that on said day last aforesaid, the said stock of goods was invoiced; but that it is not true that the said A. J. Collier took into his firm your respondent, but on the contrary your respondent purchased from the said A. J. Collier his entire stock of goods, on <sup>h</sup> and at that time, except, a small quantity of patent medicine, and two or three men's vests which your respondent did not take at the invoice price, and for which <sup>said stock of goods</sup> your respondent agreed to pay to the said A. J. Collier the invoice price of said goods which amounted to something over \$1000.00; and there being some matters of difference between your respondent and the said A. J. Collier on <sup>and it</sup> small settlement to make; ~~which~~ was agreed that your respondent should execute unto the said A. J. Collier, his notes for \$1000.00, and the residue of the purchase price to be paid, if any ~~should remain to be paid~~, whenever your respondent and the said A. J.

Collier should make the final settlement. Nor is it true that this respondent brought into, and contributed to the said firm a very small amount of goods, perhaps to the value of \$50.00 as charged by the com-



Jonesville, Virginia,

1899.

#2

complainant, but upon the contrary your respondent, at the date aforesaid, to wit, 1903, had a considerable stock of goods of his own in the said town of Olinger, Virginia where he had been doing business as a merchant, and on said day after he had completed the contract with the said A. J. Collier, moved a portion of the goods into the building where A. J. Collier had been doing business, to the amount of about \$500.00, the exact amount being not known at this time to the respondent, but an invoice of which was taken and entered into a book at the time, and the said book is now in the possession of a receiver appointed in this case, M. G. Ely and <sup>he</sup> ~~who~~ refuses and has refused to turn over to your respondent; but as your respondent now recollects the goods moved by him into said building, amounted to (\$489.0+) four hundred eighty nine dollars and some cents.

4th, Nor is it true that the said Z. P. Smith, and the said A. J. Collier continued <sup>to do</sup> business under the firm name of A. J. Collier & Co., up to about the 2nd day of March 1903, but on the contrary your respondent, at no time did any partnership business with the said A. J. Collier, but from the time your respondent moved the goods in with the stock which he had purchased from the said A. J. Collier as above set out, continued doing business in the name, <sup>of the</sup> ~~A~~ Olinger Bargin Co. that all goods <sup>a</sup> that were purchased after the invoices were taken on the 20th day of January 1903, up to the time of the filing of the said bill of complaint, were purchased in the name of the said Olinger Bargin Co. and all check given in ~~the~~ payment for goods were made in the name of the said Olinger Bargin Co. The said A. J. Collier may during that time have given some of his individual checks in the name of A. J. Collier & Co. but if any such checks were given they were given for debts contracted by the said A. J. Collier before the 20th day of January 1903. It is true that on or about the 28th day of February 1903 the said A. J. Collier received a fatal wound from a pistol shot, and that on the 2nd day of March died intestate; but it is not true that the said A. J. Collier



Jonesville, Virginia,

1899.

\$3

owned any interest in the stock of goods mentioned in the complainants bill, but on the contrary all right, title and interest to said goods had passed from the said A.J. Collier to this respondent.

5th, Your respondent supposes that A.J. Collier at the time of his death was considerably in debt, but this he only knows from <sup>her</sup> say, and the truthfulness of it ~~he~~ neither admits nor denies but demands strict proof <sup>thereof</sup> ~~by~~ the plaintiff, <sup>your</sup> respondent is also advised that the said administrator has in his hands ample means with which to pay the indebtedness of the said A.J. Collier.

6th, It is also true that after said A.J. Collier received said fatal shot as aforesaid <sup>he</sup> was taken to your respondent's in the town of Olinger where he had been boarding for some time, and there he was kept until he died. At the time the said A.J. Collier was wounded your respondent <sup>wife</sup> was sick, and your respondent would not under any circumstances, had taken the said A.J. Collier to his home had there been any other place in the town of Olinger for him to have been taken. It is also true that the said A.J. Collier had upon his person when he was shot about \$16.22 and that your respondent <sup>took</sup> ~~taken~~ from the person of the said A.J. Collier at the request of the said A.J. Collier, one purse in which there was \$15.00 in money-- currency, but this money he accounted <sup>ed</sup> for in full to the appraisors of the estate of A.J. Collier before the institution of this suit. This money had been received by the said A.J. Collier as he claimed for produce which he had sold some few days before he received said wound. There was left on his person in another pocket the sum of \$1.22

7th, It is also true that at the time the said complainant came to Olinger on the 7th day of March 1903 to take charge of the estate of the said A.J. Collier that your respondent was in possession of the stock of goods, but there was nothing in that to surprise the said complainant because your respondent had had exclusive possession of the same from the 20th day of January 1903 up to that time under his contract with the said A.J. Collier, and it is also true that your respondent denies the right of the said complainant to any



Jonesville, Virginia,

1899.

#4

claim of interest in said business.

8th, It is not true that your respondent refused on the outset or at any othe time to tell said complainant by what authority he claimed the whole of said business, but on the contrary he told him plainly and emphatically that he had purchased said goods from the said A.J.Collier and that he had executed unto the said A.J.Collier ~~the~~for three separate notes; one for \$200.00 due in six months, one for \$200.00 due in nine months, and one for six hundred dollars (\$600.00) due in two years.

~~That~~ The notes your respondent took from the papers of the said A. J. Collier and delivered into the possession of the said complainant, the papers of the said A.J.Collier having previously been turned over to your respondent by young Car Bailey and Wm. Stout, who had taken them from the said Collier's cloths at the request of Collier's father and brother, the said Collier's father having requested your respondent to take charge of and care for the effects of the said A.J.Collier.

It is true that these notes were executed on the 28th day of February 1903 and ~~were executed and delivered~~ <sup>on</sup> that day and that year executed and ~~turned~~ delivered to the said A.J.Collier, before he was shot, and in good faith on the part of your respondent; if your respondent had have known that the said A.J.Collier was going to be shot upon that day he certainly would not have executed the notes an delivered them to him. If your respondent would have wished to have <sup>committed</sup> ~~brought~~ a fraud upon the rights of A.J.Collier he certainly had sense enough to have dated the notes on a day previous to that on which said Collier was shot.

Your respondent emphatically denies that said notes were executed to the said A.J.Collier without his consent and after the said A,J. Collier was shot or dead, and place the same among the papers of the said A.J.Collier for the purpose and intention on his part to defraud and cheat the estate of the said A.J.Collier out of any interest he had in said stock of goods, or to cheat and defraud the creditors of the said A.J.Collier & Co.

It is true that your respondent is a poor man, but he denies



*Janesville, Virginia,*

*1899.*

#5

the charge that he is insolvent. His credit has always been good and his character above reproach, and if your respondant had been permitted to have remained in possession of said goods and to have sold them as he proposed doing he would have been amply able to have met and paid off every note as it became due.

Your respondant again denies the allegation that said notes were executed after said Collier was shot or dead and the time of payment was fixed so as to give the said Smith time and opportunity to dispose of said goods and to squander the same so that nothing could be made with which to pay the indebtedness of said firm, but on the contrary the said notes were executed with the full knowledge and consent of the said Collier, and the time fixed for and payment was satisfactory to the said Collier and they were accepted by him.

It is true that at the time of the institution of this suit your respondant was intending to remove said stock of goods out of the county into the county of Wise, where he had rented a place of business several days before the said Collier was shot. Your respondant had rented this place for the purpose of opening up and selling said stock of goods, and your respondant denies that said goods were going to be moved for the purpose of cheating and defrauding the said firm as well as the estate of the said Collier.

Your respondant alleges and charges that said stock of goods at the time of the institution of this suit and at the time they were seized and placed in the hands of M.G. Ely receiver, ~~they~~ were worth at least \$1500.00; about \$500.00 of which were the individual goods of your respondant and had been before they were placed in said house; and the residue were goods that your respondant had purchased from the said A.J. Collier.

Your respondant alleges that he has sustained great injury and damage by reason of the seizure and sale of said goods which sale has made it a large sacrifice by said receiver.



#6

And now having fully answered the complainants said bill or so much thereof that he is advised that it is material that he should answer, your respondent asks to be hence dismissed with their reasonable cost in this behalf expended.

Ort & Noel, p.d.



J. P. Smyth  
ad. Answer

R. L. Pennington Adm'r

Filed in open court  
and by leave thereof  
This July 9<sup>th</sup> 1903

A. B. Munsey Clk.



King Bros. Shoe Co. )

vs. )

R.L.Pennington, Admr. et als. )

Answer of Administrator

To the Honorable H.A.W.Skeen Judge of the Circuit  
Court for Lee County:

The answer of Robert L. Pennington, administrator of the estate of A.J.Collier, deceased, to a petition filed in the chancery suit of R.L.Pennington, Administrator, vs. Z.P.Smith, by King Brothers Shoe Company. For answer to the said petition, or so much thereof as your respondent is advised is necessary that he should answer, answering he says, that personally he knows nothing of the indebtedness claimed by the said King Bros. Shoe Co. against the estate of A.J.Collier, of which he is the legal representative, but he has made some investigation with reference to the justice of the said claim set out in the said petition, amounting to the sum of \$152.20, and so far as your respondent has made inquiry and investigation, he supposes that the said debt set out in said petition is just and unpaid and that the same should be paid out of any assets, which come into your respondent's hands, after the payment of all expenses of the said administration according to the priority of the said King Bros. Shoe Co.'s claim. Your respondent alleges that it is true that the said Z.P.Smith, as set out in the said original bill of the said Pennington, administrator vs. Smith, that the said Smith and said Collier were in partnership as stated in the said bill, and that upon the death of the said A.J.Collier, the said Z.P.Smith undertook to cheat and defraud the estate of the said A.J.Collier out of the assets of the said partnership by executing sham notes to the said A.J.Collier, as set out in his original bill filed in this suit.

For answer to that part of the petition of the said King Bros Shoe CO., which charges the said A.J.Collier with collusion



with Z.P.Smith to hinder, delay and defraud the creditors of the said A.J.Collier, your respondent says that he knows nothing, but states, however, that he has made some investigation as to the statement of this part of the allegation of said petition, and finds that there is some grounds for the belief in the truthfulness of the said allegation, in that before the said Collier was killed, he had stated to several parties, that he was in debt and that, in order to get time on the payments which he owed for goods, he was going to sell out his stock of goods to someone, yet, however, your respondent believes that, if said Collier had any such intentions, they were never carried out, but that the said Z.P.Smith, knowing such intentions and the allegations of said Collier that he was going to sell, undertook after the death of the said Collier, to consummate a trade with himself, and executed to the said Collier the several notes set out in said petition and placed them among the papers of the said A.J.Collier, so as to make it appear that a consummation of a sale had been completed during the life-time of said Collier. If, however, Your Honor should be of the opinion, when the proof in this case is taken, that said Collier actually entered into a scheme to defraud his creditors with said Smith, your respondent will not undertake to deny the right of said creditors to have said sale to said Smith set aside, on that account, if the court should believe that such a sale was consummated. Upon the other hand, he would readily join in the prayer with said creditors to have any such sale made for such purpose set aside and vacated. And now having answered the said petition so far as your respondent is advised it is necessary he should answer, he prays to be hence dismissed, etc.

*Peremptory Plea* - p.d.



R. L. Pennington  
Admr. vs.  
vs. { In Chy  
J. P. Smith

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Answer of Admr.

Filed in open Court  
and by leave thereof  
Feby. 16, 1904

H. T. Ewing clerk



R.L.Pennington, Admr. et al,

Complainant,

vs

In Chancery,

Z.P.Smith et al.

Defendants.

This cause came on this day to be heard upon the papers formerly read therein and reports of special commissioner A.M.Goins filed therein on the 5th day of Sept, 1904, and Dec. 14, 1904, respectively, and was argued by counsel.

On consideration of all which, and said reports of said commissioner being unexcepted to the same is hereby confirmed; and it appearing to the court that the last named report of said Commissioner A.M.Goins is the settlement of the Administration account of R.L.Pennington administrator of the estate of A.J.Colliver, De'ce, it is ordered that the clerk of this court record the same in the book of Fiduciary settlements together with the statement thereto appended and this decree; and it appearing that the said R.L.Pennington has fully settled his account and accounted for the funds that have come into his hands, he is hereby relieved from further duty thereon; and there remaining nothing further to be done in this cause, the same is stricken from the docket.

*[Handwritten notes in cursive script, including "Clerk of Court", "Sept 14 1904", "Dec 14 1904", "R.L.Pennington", "A.M.Goins", "A.J.Colliver", "De'ce", "settled", "accounted", "relieved", "duty", "done", "cause", "docket", "stricken"]*



W. P. Huntington

v. 3. Meru finas  
by Conf. Adams  
Sittumt

G. P. Smith et al

Entered C. O. B.

No. 7, page 5 to.

Enter this

Dec. 15, 1904

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H. A. W. Sheen



I.L. Pennington, Admr., Complainant )

vs )

Z.P. Smith, Defendant. )

Decree.

This cause came on this day to be heard upon the papers formerly read therein, the depositions of witnesses and the report of A.M. Goins, special commissioner, filed herein on the 11th day of January, 1904, the petitions of King Bros. Shoe Co., E.W. King & Co., Pocahontas Wholesale Grocery Co., Graham Supply Company, Armstrong-Cater & Co., Norton Grocery Co., and J.P. Bell Company, and the answer of R.L. Pennington, Admr., to the said petition of King Bros. Shoe Co., which is treated as an answer to each of the petitions mentioned, the general replication to said answer by said petitioners, and was argued by counsel: On consideration of all which, it is adjudged, ordered and decreed that the sale claimed by the said A.J. Collier to Z.P. Smith of the stock of goods in controversy *& the notes of the said Smith he concerned & delivered to him* is hereby set aside and held for naught, and the injunction hereinbefore granted is hereby perpetuated, and said R.L. Pennington, Admr. will receive from the receiver appointed in this cause, all funds derived by him from the sale of the goods and pay them out, as fast as received by him, to the creditors of said A.J. Collier, deceased, whose claims are reported in this cause, after first deducting therefrom, all costs of administration and the costs of receiver and the costs of this suit incurred by the said plaintiff and said petitioners, which items of costs he will pay first. The said R.L. Pennington also will pay out of said fund, one attorney's fee, to the attorneys of all the petitioning creditors, of \$15.00. It is further adjudged, ordered and decreed that R.L. Pennington, Admr. recover of the defendant, Z.P. Smith, his costs expended in this cause in prosecuting the said suit for



the litigation of the question in regard to the said stock of goods. The said administrator will pay his own costs, as to the ascertainment of the debts by the commissioner herein appointed, and such other costs as were incident thereto. And

it is further adjudged, ordered and decreed that A.M. Goins, who is hereby appointed a special commissioner for the purpose,

is hereby authorized to settle the administration account of the said administrator, *+ report any other debts against the estate of A.J. Cochrin* and to report his action hereunder at the

next term of this court, and the said receiver in this cause is hereby directed to turn over to the said R.L. Pennington, Admr., all funds derived by him from the sale of the property received by him in this cause. The defendant, Z.P. Smith, feeling himself

aggrieved by the order of the court hereinbefore entered, has prayed that the court grant a suspension of the foregoing decree, in order to give him time to apply for an appeal from the decision of the court herein. It is, therefore, adjudged, ordered and decreed that the execution of the said decree hereinbefore

entered is hereby suspended for sixty days, but before the said Smith shall have the benefit of this suspension, he shall,

within <sup>30</sup> ~~60~~ days from this date, execute before the clerk of this <sup>Court</sup> ~~county~~, his bond in the penalty of <sup>With good security -</sup> \$250, conditioned to

pay unto R.L. Pennington, Admr. all damages which he, or any other person may <sup>sustain</sup> ~~be caused~~ by reason of such suspension.

And this cause is continued.



Post-Office

7 Decm

J. A. Smith

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Entered C. C. B.

No. 7 page 423

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Enter this  
Decm Files  
20, 1904

H. A. W. S. L. W.



R.L.Pennington, Admr. Complainant, )  
vs. )  
Z.P.Smith, Defendant. )

Decree.

This cause came on this day to be heard upon the papers formerly read therein, the depositions of witnesses and the report of A.M.Goins, special commissioner, filed herein on January 11, 1904, and was argued by counsel. On consideration of all of which, it is adjudged, ordered and decreed that the sale claimed to be made by A.J.Collier to Z.P.Smith of the stock of goods in controversy, is hereby set aside and held for naught, and the said R.L.Pennington, Admr. will receive from the receiver appointed herein all funds derived by him from the sale of the goods, and pay them out, as fast as received by him, to the creditors of A.J.Collier ~~and~~, whose claims are reported in this cause, after first deducting all costs of administration, costs of receiver and costs of this suit, <sup>incurred by the plaintiff & petitioners</sup> which sums he will pay first. It is further adjudged, ordered and decreed that R.L Pennington, Admr. recover of the defendant, Z.P.Smith, his costs in this behalf expended, and that said petitioning creditors herein recover of the said Z.P.Smith all costs incurred by them in this cause, for which amounts execution may issue against the said Z.P.Smith. It is further adjudged, ordered and decreed that any creditor of A.J.Collier, or of A.J.Collier & Co., who has <sup>or Collier & Kelly</sup> not filed his claim in this cause and had the same allowed by said commissioner, or his petition herein, is hereby granted leave to file his said petition and mature it at rules; and A.M.Goins is hereby appointed a special commissioner to ascertain and report any other claim or claims against the estate of A.J.Collier and report them in this cause, and is hereby authorized to settled the administration account of the said administrator and to report his action in this cause at the next term of the court.

~~and the~~  
be treated as a receiver to said petitioners & General application.

Set aside all petitions after noon. That it is now decreed the same.

Admr. - shorts

Collier  
notes



~~R. I. Pennington, Adm., Complainant.~~

~~Z. P. Smith, Defendant,~~

Z

The defendant Z.P. Smith feeling himself aggrieved by the order of the court herein and expressing his desire to take an appeal from the order of the court entered herein, has prayed the court for a suspension of the execution of the foregoing decree, it is therefore adjudged, ordered and decreed further that the execution of the said decree be suspended for ninety days to give the said defendant time to take said appeal in case he should be ~~an~~ advised to do so, and this cause is continued.



P. A. Penington  
Acum  
Wm  
for  
v Alex  
fina

J. P. Smith

Enter this decr  
July 17, 1904



LEE CIRCUIT COURT.

ROBERT L. PENNINGTON, ADMR<sup>r</sup>.,

V.

Z. P. SMITH.

DECREE.

Upon motion of the defendant Z. P. Smith, leave is granted him to file his answer in this cause, which is accordingly done and plaintiff replies generally ~~generally~~ to said answer and thereupon came E. W. King and Anson King, partners in trade under the firm name of King Brothers Shoe Co., and also E. W. King, L. C. King and A. J. Scott, partners in trade under the firm name of E. W. King & Co. and asked leave to file their separate petitions in this cause and to unite with the plaintiff in the litigation ~~in~~ <sup>in</sup> this controversy against Z. P. Smith and praying likewise that said cause be treated as a creditors bill for the purpose of settling the estate of A. J. Collier, deceased, upon consideration of which the said petitions are allowed to be filed, and the plaintiff and defendant both enter their appearance to said petition and waive service of process, and by agreement of parties the answer of the defendant to the original bill is to be treated as an answer to said petitions and upon motion of said petitioners, *Wm. Goines*

\_\_\_\_\_ is appointed as a Special Commissioner who shall convene the creditors of A. J. Collier both in his individual capacity and as doing business under the firm name of A. J. Collier & Co. and he shall make a separate statment of the different clases of creditors against A. J. Collier and shall also ascertain and report whether or not any debts against A. J. Collier & Co. in the mercantile business in controversy were incurred after the ~~1st~~ <sup>2nd</sup> day of January, 1903, He shall also ascertain and report the assets of the estate of A. J. Collier outside of the claim in controversy herein between R. L. Pennington, Admr<sup>r</sup>. vs. Z. P. Smith. Said commissioner shall publish notice of his sitting for four weeks in



some news paper published in Lee County which shall be in lieu of personal notice of such sitting, and leave <sup>to</sup> ~~for~~ granted to any of the other creditors of A. J. Collier or A. J. Collier & Co. to file their petition, herein if so advised, in the clerk's office at any rules between the present time and the next term of this court such petitions when filed to be proceed with according to law.

*And this cause is continued*



R. L. Pennington Adm

vs Drum

J. P. Smith et al

Entered on July 1877,  
Pages 331 & 332.

Can be this  
H. C. W. Skene  
July 10 1873



Virginia ,

At a circuit court continued and held for Lee County at the court house thereof on Friday July the 10th 1903.

Robert L. Pennington ----- Plaintiff

vs.

Z. P. Smith , ----- Defendant .

Upon motion of the defendant Z. P. Smith , leave is granted him to file his answer in this cause, which is accordingly filed and the plaintiff replies generally to said answer and thereupon came E. W. King and Anson King partners in trade under the firm name of King Brothers Shoe Co., and also E. W. King, L. C. King , and A. J. Scott, partners in trade under the firm name of E. W. King and Co., and asked leave to file their separate petitions in this cause and write with the plaintiff in the litigation in this controversy against Z. P. Smith and praying likewise that said cause be treated as a creditors bill for the purpose of settling the estate of A. J. Collier , deceased, upon consideration of which said petitions are allowed to be filed, and the plaintiff and the defendant both enter their appearances to said petitions, and waive service of process and by agreement of parties the answer of the defendant to said original bill is to be treated as an answer to said petitions, and upon motion of said petitioners A. M. Goins is appointed as a special Commissioner who shall convene the creditors of A. J. Collier both in his individual capacity and as doing business under the firm name of A. J. Collier & Co., and shall make a separate of the different classes of creditors against A. J. Collier, and shall also ascertain and report whether any debts against A. J. Collier & Co. , in the mercantile business in controversy were incurred after the 20th day of January 1903. He shall also ascertain and report the assets of the estate of A. J. Collier outside of the claims in controversy herein between R. L. Pennington Admr., vs. Z. P. Smith Said commissioners shall publish notice of his sittings for four weeks in some news paper published in Lee County which shall be in lieu of notice of the other creditors of A. J. Collier or



to file their petitions herein if so advised, in the Clerk's office  
at rules between the present time and the next term of this court  
such petitions when filed to be proceeded with according to law.

And this cause is continued .

A Copy ,

Teste :

A. B. Muncey clerk .



Robert L. Pennington  
vs } Copy of Deed  
J. P. Smith

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Virginia,

~~In the Circuit Court for Lee County began and held on this the 8th day of March, 1903.~~

R.L.Pennington, Administrator, &c.

Complainant

vs In chancery

Z.P.Smith,

Defendant.

This day the complainant presented his bill to the court duly sworn to, asking and praying that the defendant Z.P.Smith and all other persons be enjoined and inhibited and restrained from interfering with, selling, disposing of, or in any wise removing from this county all or any part of the goods, wares and merchandise of the late firm of A.J. Collier and Co; and also for the purpose of enjoining and restraining the said Smith and all other persons from interfering with, receiving or collecting any notes, accounts, debt, demand or asset of the said firm of A.J. Collier and Co.; and also for the further purpose of having a receiver appointed to take charge and possession of all the goods, wares, merchandise and assets, together with all books, accounts, notes, and demands of the said A.J. Collier and Co.; On consideration whereof the court doth adjudge order and decree that the said Z.P.Smith, his agents and all other persons, be and the same are hereby ~~enjoined~~ enjoined inhibited and restrained from interfering with or removing from this county any of the goods wares and merchandise of the late firm of A.J. Collier and Co.; and that said Smith and his agents and all other persons are hereby enjoined, inhibited and restrained from interfering with, collecting and receiving any note or account or debt or asset, book or demand of the said late firm of A.J. Collier and Co..

Pursuant to the prayer of the said complainant's bill, it is hereby further adjudged ordered and decreed that M.G. Ely who is hereby appointed a receiver for the purpose will as soon as practicable take charge of and dispose of the said stock of goods wares and merchandise, together with all accounts, notes,



demands and assets, of the late firm of A.J. Collier and Co.,.  
But before the said Ely shall enter upon the duties of such  
receiver he will execute bond before the clerk of this court in  
the penalty of \$2000.00, conditioned to faithfully perform his duty  
as such receiver and to account for all monies that may come into  
his hands as such. All money ~~and xxxxxxxxxx~~ coming into his hands  
by virtue of this order, he will hold untill the future order  
herein of the court.

It is further adjudged ordered and decreed hat the said Z.P.  
Smith, his agent and employes having in thier possession or control  
of the effects and demands of the late firm of A.J. Collier and  
Co, are hereby directed to turn the same over to the said M.G.  
Ely as such receiver, other wise to be liable on failure or refusal  
thereof, to be adjudged in contempt of the court, and to be dealth  
with according to law. *And the cause is continued.*

~~It is further adjudged ordered and decreed that before the  
said injunction shall take effect that the said plaintiff will  
execute bond before the clerk of this court in the penalty of  
\$200.00, conditioned as the law required. And the said plaintiff  
will mature his suit at rules and this cause is continued~~

*H. C. W. S. L.*  
*Judge of*  
*Law County Circuit Court*



R. L. Beumington Allen

22<sup>nd</sup> Decr  
for Inguine

3 P. Smith

Exch. Co B. 7 P. 268



The deposition of M.V.Olinger taken before me, Pearl Summers, a Notary Public, in and for the County of Lee, State of Virginia, to be read as evidence in behalf of the Defendant, Z.P.Smith, in a certain suit in chancery pending in the Circuit Court for Lee County, wherein R.L.Pennington, Admr. is Plaintiff and Z.P.Smith is Defendant, in the law office of R.L.Pennington, in the town of Jonesville on February 12, 1904, pursuant to agreement of attorneys.

Present: J.W.Orr for Defendant.  
Geo.P.Cridlin, for Petitioning Creditors.  
R.L.Pennington for Plaintiff.

M.V.Olinger, being first duly sworn, deposes and says:

By Judge Orr.

Q.1 Please state your age, residence and occupation.

A. 47 years; residence, Olinger, Va.; occupation, farming.

Q.2 Were you acquainted with A.J.Collier, deceased, and are you acquainted with Z.P.Smith?

A. Yes, sir.

Q.3 Did you ever have a conversation with A.J.Collier in reference to his selling out his mercantile business at Olinger? If so, please state when and where and what was said by him.

A. Yes, sir. I had a conversation with Mr. Collier on the day that he was shot before the shooting took place, after I was sworn in as executor of the estate of J.B.Olinger, my father. There was a due-bill fell into my hands, that was due my father from A.J.Collier with his name to it, and I had heard someone say that Mr. Collier was going to close out his business, or his store business, and the due-bill called for merchandise and I wanted to get the cash out of the due-bill. I had learned that my brother owed Mr. Collier and I went and asked him if he would pay me the cash, provided that Mr. Collier would take the due-bill in and credit his account with the amount. He told me that he would, so



I went and presented the due-bill to Mr. Collier and asked him if he knew it and ~~and~~ <sup>and</sup> he did. It had his signature. And I asked him if it was alright and he said that it was alright and I asked him if he would credit my brother's J.A.Olinger's account with that amount and he stated that he would. And he says, "I am going out of business here and it is alright. I will credit the account with the amount of the due-bill", and I asked if Moran Olinger had bought his interest in the store and goods and he said that he had not, that Doctor, that is Z.P.Smith, had bought his interest in the goods, and the due-bill was settled in the way that I proposed.

Q.4 State whether or not, you purchased any of the Z.P.Smith goods after they had been taken charge of by the receiver; and, if so, from whom and on what terms, or at what price.

A. I purchased some of the <sup>o</sup>goods that was taken charge of, that was claimed by Z.P.Smith and Mr. Collier some days after Mr. Collier's death. I bought two pair of shoes, a pair of girl's shoes and a pair of ladies' shoes, is my recollection, from Mr. Wolfenbarger.

Q.5 What was Wolfenbarger doing there?

A. He was selling out the goods there, that they claimed they had taken charge of, to different persons.

Q.6 State about what you paid for the shoes--at what price did you buy them?

A. I could not state exactly what I paid for the shoes, I do not remember exactly. Mr. Wolfenbarger said to me when I was buying the shoes, "I will sell you these shoes for considerably less than the marked price of the shoes", and he sold me the shoes for less money than they were marked to be sold at, though I do not remember the marked price,

Q.7 How long did you know Mr. Smith at Olinger?



A. I do not remember the time exactly, when Mr. Smith first came to that place, we formed an acquaintance. It may be a year or more.

Q.8 What was his reputation in that community for paying his debts?

A. His reputation was good, so far as I have learned.

Q.9 If Mr. Smith purchased from A.J. Collier \$1000 worth of goods and put in with them some \$400 or \$500 worth of his own goods and executed to said Collier his notes for \$1000 for the goods purchased from Collier, \$200 part thereof to be paid six months after date, February 28, 1903, \$200 another part thereof, to be paid nine months after said date and \$600, the residue, to be paid two years after said date, would you consider Mr. Smith good for the amount of said notes, and that he would have been able to pay said notes when due, if he had been permitted to go on in business with the amount of goods he had on hands?

A. I consider he was good for the amount of the notes and that he would have been able to pay them, if permitted to go on in business with the stock of goods he had.

Q.10 I believe you have stated that you saw Mr. Wolfenbarger selling of the Smith goods to different persons, after they had been taken charge of by the receiver; please state, as near as you can, the extent of such sales made by him.

A. I saw him sell to a few person, specially upon the day that I purchased the shoes, I do not remember the number exactly, some few persons I saw buy goods there then. I could not say whether they paid for them or not. I heard the remark that they were selling these goods very low, or something to that



effect.

Cross-examination.

Q.1 If Mr. Smith owed \$1000 for the stock of goods which he was in possession of, and the stock of goods which he was in possession of was worth only \$1000, and he was relieved of the payment of the \$1000 in notes, would he have been at all injured by the transaction?

A. Possibly he might.

Q.2 How?

A. The opportunities to use means at that time, which he had in his hands, he may have been injured by being deprived of these.

Q.3 Then you would not consider the notes worth their face value?

A. Yes, sir, I would consider them worth their face value.

Q.4 Then, if they were worth their face value, might he not have taken the same notes and have purchased other goods worth \$1000 and do just as well with them?

A. I rather think that an unfair question. I mean that the notes were good for what they called for, when due.

Q.5 What would you have considered their present value?

A. I would have considered their present value equal to that of the discount of their percent.

Q.6 Would you be willing to take these notes off the hands of the administrator and pay him cash for them at their present value

A. I have not the means.

Q.7 Outside of the stock of goods, which Mr. Smith had at Olinger before he put his stock of goods in with the Collier goods, what property did he have that you know of?

A. The best I remember, he owned two houses and lots in Olinger.

Q.8 Do you know that Mr. Smith owned these houses and lots and



had deeds for them?

A. The best I remember, he purchased two houses and lots. I had a note come into my hands against <sup>that is, one house and lot,</sup> that property, and the man he purchased from paid that note off and he got the deed upon that date, if I remember correctly.

Q.9 Do you know what he gave for one or both of these lots, if he owned them.

A. I am not positive. \$125 or \$135, one or the other, something near that, was my information, for one of them. I do not know exactly what he paid for the other. I am not positive that he owned it, yet I heard them say that Mr. Smith had bought the property from Mr. Bailey and later sold it to Mr. Lawson. I do not know whether he sold it before or after the 20th day of February, 1903.

Q.10 Do you know whether the deed to this property that Smith got was to his wife, or to him?

A. I do not know.

Q.11 Then you do not know, as a matter of fact, whether Smith owned any real property, except what you are stating from hearsay; you never saw any deeds to it.

A. I rather think I saw Mr. Bailey draw up a deed to Mr. Smith or to his wife.

Q.12 What was Mr. Smith's wife's name?

A. I understand that her given name is Callie.

Q.13 From whom were these lots that you are speaking of, purchased?

A. One of them was purchased from Henry Johns, or W.H. Johns, which ever it is, the other one from John S. Bailey, I think that is correct.

Q.14 Then, if the deeds to the lots that you have been talking about were taken to Mr. Smith's wife, the only property that he had, before he got possession of the Collier stock of goods, was the little stock of goods that he had at Olinger



at that time?

A. I suppose so, except that I think he had a horse and cow.

Re-examination in chief:

Q.1 Did not Mr. Smith also own and operate, or have operated, a blacksmith's shop about January or February, 1903?

A. I rather think he did.

Re-cross examination:

Q.1, ... Were you acquainted with the blacksmith's shop in question?

A. Yes, sir.

Q.2 What was the value of the shop, etc?

A. I think this shop was on one of the lots which I have been talking about. The shop, the tools and that part of the lot on which the shop stood, were worth, I suppose, something near \$80.

Q.3 What would you put the tools at, outside the house and lot?

A. My best recollection is that I heard the blacksmith say he had \$30 worth of tools. I am not a blacksmith, and do not know the value of tools so as to speak definitely of their value.

Re-re-examination in chief:

Q.1 If I understand you correctly, you say that Mr. Smith owned two lots in the town of Olinger and, on one of these lots was a blacksmith's shop. What were these two lots, with the improvements thereon, including the blacksmith's tools, reasonably worth about January or February, 1903, or when he owned them?

A. I suppose something near \$240 or \$250.

And further this witness saith not.

Signature of witness waived by agreement of Counsel.

Witness claims one day's time and mileage, \$1.14.



Virginia, Lee County, to-wit:--

I, Pearl Summers, a Notary Public in and for the County of Lee and State of Virginia, do hereby certify that the foregoing deposition of M.V.Olinger was duly taken and sworn to before me at the time and place and for the purpose in the caption mentioned.

Given under my hand this 12th day of February, 1904.

Pearl Summers N.P.

Bill of costs:

|             |               |                           |
|-------------|---------------|---------------------------|
| Witness---- | \$1.14        | <i>paid by Z.P. Smith</i> |
| N.P.        | .75           |                           |
|             | <u>\$1.89</u> |                           |



J.P. Smith

also 3 Deposition  
of  
M. V. Clinger

Robert Pennington Allen

Rec'd from Rose

Summers & filed

July 13, 1904 -

Wet Ewing Clark.

N.P. .75

Witness.  $\frac{1.14}{1.89}$

Pennington Bros.  
ATTORNEYS AT LAW  
JONESVILLE AND PENNINGTON GARVA



The depositions of Moran L. Olinger, A. P.  
Reese, Rial Lanson & S. L. Smith  
taken at Olinger Va. by consent of parties,  
on the 24th day of October 1903, to be read  
as evidence on behalf of the defendant  
in a certain Chancery Cause pending in  
the Circuit Court of Lee County Va, in which  
R. L. Pennington, Administrator of A. J.  
Callier deceased is plaintiff and G. P.  
Smith is defendant.

Present - R. L. Pennington for himself,  
and James W Orr for Deft.

The said Moran L. Olinger a witness of  
lawful age and being first duly sworn  
deposes and says.

Question by James W Orr.

1. What is your age, residence and occupation?

Ans 27 years, Dryden Va, Car Refainer.

Ques 2. Were you acquainted with A. J. Callier in  
his lifetime, and if so how long and are  
you acquainted with G. P. Smith.

Ans I was well acquainted with Mr Callier &  
also with G. P. Smith.

Ques 3. Were you acquainted with these gentlemen  
while they were engaged in merchandising at  
Olinger Va.

Ans I was.



Ques 4. Did they each have a stock of goods at said place?

Ans. I suppose they did, there was the firm of A. J. Callier & Co, in one house and G. P. Smith in another.

Ques 5. Do you know whether or not A. J. Callier sold his stock of goods or that of A. J. Callier & Co, to G. P. Smith, & so please state anything you may know about it?

Ans. I only know what A. J. Callier said to me about <sup>it</sup>. I was here at Clinger, and Mr Callier wanted to go to Big Stone Gap. He asked me if I would not stay in the store that day for him, I told him I would, and did so. When he came back that evening he asked me what I was going to do for a day or so. I told him that I did not know that I was going to do anything particular. He says I want you to invoice my goods, and he said I am going to sell out to G. P. Smith a part of them. That was about all was said. We talked on and I said I guessed I could help him. I think he asked me what I thought about it and if I thought the Doctor would be all right. I told him so far as I knew he would be all right. He, I believe, asked me something



about the Doctor's father, if it would be all right if he would go on the note, or notes, and something about the father's land. And said he understood or guessed the father's land was worth \$2000.<sup>00</sup> any way.

I told him I did not know anything about his father's land, but supposed he owned a farm, but I knew nothing of its value, but guessed it was worth \$2000.<sup>00</sup>

Ques 6. When was this conversation between you and A. J. Callier?

Ans. The best I remember it was in Jan'y 1903.

Ques 7. Did you, or not, after that conversation assist in taking an invoice of the A. J. Callier goods and if so when was it and for what purpose?

Ans. I did. We commenced the invoice the next day, and it was my understanding that the object was the selling out to Smith of all or part of the stock as he had told me the day before.

Ques 8. ~~Did~~ Was an invoice taken of the entire stock, or only part.

Ans. The entire stock.

Ques 9. In taking the invoice who assisted you?

Ans. A. J. Callier, G. P. Smith, L. B. Thompson & myself. Callier & Smith, handled the goods and called out the price, which was first cost and carriage



and I entered the invoice in a book & T. B. Thompson entered the same in another book. I now hand you a book in which purports to be an invoice of goods, entered, from and including page 1 <sup>including</sup> to page 19, <sup>page</sup> inclusive, will please examine same and state in whose handwriting it is and whether or not it is an invoice of the said goods, of which you speak.

Ans. I think it is in T. B. Thompson's handwriting and is the invoice of said goods kept by him.

Ques 11. What does the invoice in said book amount to.

Ans. It seems to be fasted up \$1049.85.

Ques 12. Will you please file said book with this your deposition marked "Book".

Ans. I file the same as requested.

Ques 13. Do you remember a conversation between Mr. Calhoun & J. P. Smith, at the time the invoice was taken, about a show case and its contents, if so please state what was said.<sup>2</sup>

Ans. I do. They seemed to differ as to the price of the show case. They were trying to agree upon a lump price to save going through all the little articles, and Calhoun



seemed to become a little fretted over it and finally named a price he wanted take and he told Smith he could just take it at that or take nothing.

I do not now remember whether Smith took it at the price or not. My book in which I kept the invoice, would show.

Anyhow I think he took <sup>it</sup> at some price.

Ques. 14. Where is the book in which you kept the invoice?

Ans. I do not know, I turned it over to Mr. Callier or Mr. Smith. I do not remember which.

Ques 15. Is by P. Smith, the defendant, known as Doctor Smith, and is he the person that A. J. Callier said he was going to sell out to?

Ans. He is known as Doctor Smith and is the person A. J. Callier said he was going to sell out to.

Ques 16. Did Doctor Smith have a stock of goods in Clinger of his own at the time he bought out A. J. Callier?

Ans. He was, at the time, selling goods at Clinger, that I suppose was his, in another house.

Ques 17. Do you know what he done with his goods after he bought out Callier?



Ans. I do not know, I went away soon to West Va.

Ques. Do you remember if any corn being on hand at the time the invoice was taken off or was it invoiced?

Ans. There was some corn in the store house & some out in the coal house in boxes, that was not invoiced to my knowledge.

X = Examination

Ques. How much corn was in the store at that time or near or you can tell?

Ans. I should think there was something like 40 bushels.

Ques. Were you in or about the store any more after the invoice up to the time Collier was killed?

Ans. I was not in there or clerk any - I think I was in there some after that.

Ques. Do you know what Collier was doing from the time he had the invoice taken off



to the time he was 12 years old?

Ans. - I saw him then at the store.  
He seemed to be trying to sell  
what goods were there.

Ques. Did Collis tell you any thing  
about the terms of the sale he was  
talking of making to ~~Collis~~ Dr. Smith.

Ans. I do not remember that he did.

Ques. Did he tell you any thing  
about being in debt?

Ans. At one time before that  
he & I were in Big Stone Gap &  
he told me he was in debt -  
saying that he was there to see  
his father that he was there to  
see his father he was going  
to let him have some money  
to help him out.

Ques. You got your understanding  
that Collis was going to sell  
out to Smith from the conversation  
you had with Collis the day  
before the invoice did you  
not?

Ans. - Yes that was all that was  
said to me about it.

Ques. Did he tell you that Smith was  
to give his father on the note for



the price of the goods - as surely?  
Ans. I do not remember that he told me  
he was to, though he asked me  
if his father would be all right.  
Re. Ex. in Chief.

Ques 1. Do you remember any of the other  
goods that were not invoiced or  
not taken by Smith?

Ans. I do not remember any thing  
but 3 or 4 men's vests & Mr. O'Leary  
just threw them back & said he  
would just keep them.

Ques 2. By way of refreshing your memory  
were there not some patent med-  
icines that Mr. Smith did not  
take?

Ans. I do not remember.

And further this deponent soath sw.

M. L. Olinger.

Witness O'Leary, day & mileage - \$0.50

A. P. Reese, another witness of lawful  
age, and being duly sworn, deposes & says.

Ques 1. What is your age residence & occupation?

Ans. 29 years, Turkey bone & Farmer.

Ques 2. Were you acquainted with A. J. Callier & do  
you know G. P. Smith?



Ans. I was acquainted with A. J. Calhoun all his life, and am acquainted with G. P. Smith about six years.

Ques 3. Were you ever engaged in the mercantile business at Olinger and if so when and how long?

Ans. I was in the mercantile business at Olinger, with A. J. Calhoun from Sept or October 1902, until in January 1903.

Ques 4. Did you sell out and if so who to?

Ans. I sold out or back to A. J. Calhoun, I had bought an interest from him, a one half interest, at four hundred & some few dollars, and sold back to him for \$75.00 cash and my notes I had given him when I purchased and I got the accounts amounting to thirty odd dollars.

Ques 5. After you sold out to Calhoun did he ever say anything to you about selling his stock of goods to anyone and if so to whom and what did he say.

Ans. He had said to me before I sold out to him that he was going to sell out. He said while he was running business at Barton Va. that he got in debt, and his creditors were going to push him for his debts and he wouldn't have anything left, and he was talking of



Ans  
Contd.

selling at that time to G. P. Smith,  
~~Before I sold out to him.~~ He talked to me  
different times about selling to Smith.

After I had sold back to Callier, he still talked  
about selling to Smith. I had moved to the  
Cane and I came down to Olinger one day  
and they were taking an Inuaice, that is W.  
J. Callier, G. P. Smith, and J. B. Thompson &  
M. L. Olinger were keeping the books and  
taking down the Inuaice. They came to

Ques 5.

Some vests and Callier threw them back  
under the counter and said if he could not  
get his price for them he would just keep  
them, they also differed about a show case  
and some things, probably, that were in it.

Ques 5. When was this, if you remember.

Ans. I think this was in January 1903.

Ques 6. Did Mr Smith at this time have a stock  
of goods in Olinger.

Ans. He had a stock of goods he was selling.

Ques 7. What became of his stock of goods.

Ans. They were moved, or some of them, in with  
the Callier stock of goods.

Ques 8. Who took charge of or sold the goods in the  
Callier store house after the inuaice of  
which you speak.

Ans. Smith sold in there and sometimes Callier



was in there too.

Ques 9. Do you know under what firm name, if any, G. P. Smith continued to do business at the Collier house, after the said murder?

Ans. I do not know that I remember.

Ques 10. Please state what sign if any was over the Collier storehouse door and anything you may know about it?

Ans. The sign of A. J. Collier & Co, was over the door, and was the same sign that Mr Collier used at Boston Va. and after he sold out to Smith, it remained there ~~some~~ same time & until Collier was killed.

Ques 11. Did you observe the stock of goods G. P. Smith had of his own at the time he bought out Collier sufficiently to give an estimate of the amount?

Ans. I can not say that I did.

Ques 12. Where was A. J. Collier boarding at the time of and before his death?

Ans. At time of his death he was boarding at G. P. Smith's.

X- C-.

Ques- Can you give the exact day of the month of June 1903. that you sold back to Collier?

Ans. I can not but it was some



where between the first & 20th of  
January.

Ques-

In answer to question 5 you  
say that Callis was telling you  
about being in debt & that his  
creditors were pushing him & he  
wanted him to sell out or he wanted  
not have any thing, did he not  
further say that if he could put  
his goods in some one else's  
hands that he could hold his  
goods & have some more time  
to make some money to pay  
him out? or words to that effect.

Ans.

He told me that he was in  
debt & his creditors would push  
him if he did not sell out, & run  
him to Cork, is about what he  
said.

Ques.

While Smith was at Olinger was  
he not in view then one Murcott's  
concern before he claims to have  
~~gone in with Callis~~ or bought  
Callis-?

Ans-

He began selling in a little house on  
the North side of the R.R. he stayed  
there only a short time. He then came



to the R. J. Woods & Sons building & brought his stock with him - & put them with a stock of goods T. B. Thompson had charge of, it was said that he had bought Thompson out, after they <sup>the goods</sup> stayed in the Woods house awhile they then moved the stock back across the R. R. to some house & another house to make room for Woods & Sons who wanted their house for themselves, the goods stayed there a very short time. Smith then took part of the goods & T. B. Thompson took part of the goods - Thompson put his in one building & Smith put his in the other. I am not positive as to the time when this division was made but it was I think after I sailed back to Collier.

Ques. How long was in Smith & Thompson's place after they divided this stock?

Ans. Yes - I don't think Smith ever straightened up his stock for sale after the division.

Ques. What kind of a looking stock did he have as to quantity & quality after Thompson got his goods out?

Ans. He had them piled up & you could not tell much about it.



Ques. State your relationship to G. P. Smith.

Ans. We married Sisters.

In chief.

Ques. Was not the house located on R.R. into which Smith moved his goods, very small and not in good condition to keep a stock of goods, and did not Smith in a short time after he moved back there, buy out A. J. Callier, & move his goods into the Callier house?

Ans. It was very small and in bad condition, and in a short time the Callier inn was taken and he moved his goods into the Callier house.

And further this witness says not.

A. P. Reese

Witness socts.

Rial Lamson another witness of lawful age and being duly sworn deposes & says.

Ques. What is your age and residence?

Ans. 56 years, Olinger Ia.

Ques. Were you acquainted with A. J. Callier deceased and do you know G. P. Smith?

Ans. I knew A. J. Callier some 6 or 8 years, and have known Doctor G. P. Smith some 4 or 5 years.

Ques. Did you ever see Doctor Smith loan any



money to A. J. Callier and if so when and how much?

Ans.

I did a short time before Mr Callier was shot. He asked Smith for nine dollars and Smith handed him two dollars and told him to pay the one dollar on some freight he owed over at the depot.

Ques.

Do you know of Smith shipping some eggs a short time before Callier was shot. if so tell anything you may know about it that connected Mr Callier in any manner with the egg shipment?

Ans.

I can not say that I saw Smith ship any eggs, but I heard Smith & Callier talking about a crate of eggs Smith had shipped to Spackfield Va. to Mr Hale. Callier was laughing about it and saying he took to Hale and sold them to him for more than Smith had sold them to Hale for, and said Hale asked him about the Smith eggs, why Smith had not sent his eggs and he laughed and told him Smith's eggs had frozen. Callier told Smith he would settle with him for the eggs or morals to that amount.

Ques.

How many eggs in a crate, and at what price did Callier say he had sold the eggs.

Ans.

Thirty six dozen usually in a crate, Smith



Ques.

Contracted the eggs to Hale at 18 cents per dozen in my presence, is my recollection. Were you present at Clinger when G. P. Smith produced and turned over to the appraisers of A. J. Callier deceased \$/5.00, or any sum of money, if so please state the amount and what Smith said about the money?

Ans. I do not remember his turning over any money, but I was present when he made a statement about some money. John Gilley asked Smith if there was any money on the person of Callier, or if he had any money when he was shot. Smith replied that he had \$/5.00, that he picked up his pants and he asked Callier or Callier told him to take the money out, that there was \$/5.00, that he aimed him the money, and that Callier told him to keep the money that if he needed any money he could get it. This is my recollection.

Ques.

Were you acquainted with the stock of goods G. P. Smith had, that he put into the Callier stock of goods, and if so please state what amount there was of said goods.

Ans.

I was acquainted to some extent with the



goods, but can not tell as to the amount of the goods, except what Collier told me. I was in the Collier store house when an invoice was being taken. Collier talked a little abrupt to Smith about the invoicing of some goods, they did not agree about, and Smith answered him back pretty much the same way, and Smith after awhile left the store, Collier then said Smith had only some four hundred & forty or forty odd dollars in there and if they could not agree he could take them out, I don't know whose goods they were invoicing.

Tues

That amount of goods did Smith have in the Wood store house before he moved them North of the Rail Road.

Sat

I think he had from twelve to fifteen hundred dollars worth. The house was tolerably well filled with goods, and it is <sup>a</sup> tolerably large house, some 75 feet long & I think thirty feet wide, with two rooms cut off the rear end about 20 feet. off. with the store room pretty well arranged and furnished with shelves, counters &c. I don't further this witness saith not.

Rial Lawton



J. L. Smith another witness of lawful age and being duly sworn deposes and says.

Ques. What is your age residence and profession.

Ans. 24 years, am now at Spalachia Va. Teaching.

Ques. What relation are you to the defendant, J. P. Smith?

Ans. We are brothers.

Ques. Did you ever hear A. J. Collier say anything about selling his stock of goods at Clinger. If so when was it and what did he say?

Ans. He told me he and Doctor Smith, my brother, were on a trade and that he was going to sell out and get a job somewhere. This was in January 1903.

Ques. Was an invoice taken of his goods after this and if so when and by whom?

Ans. There was by him and my brother, J. B. Thompson & Moran L. Clinger, assisted and I helped <sup>to</sup> foot up the invoice, which I believe amounted to eleven <sup>hundred</sup> and some odd dollars.

Ques. What did J. P. Smith do with his stock of goods that he owned at the time he bought out Collier?

Ans. He moved them in with the Collier goods.

Ques. What amount of goods did he have that he moved in?

Ans. I helped to move them. There was, I



suppose six or seven hundred dollars worth.

Ques. Did your brother after putting the goods together carry on the business as his own in the Collier house.

Ans. He did until the death of Collier.

X Ex

Ques. How did you move the Smith goods in with the Collier's goods?

Ans. He carried some & shipped some of them.

Ques. You said you suspected ~~that~~ there were some six or \$700 worth of them. How do you know there was that much of them?

Ans. I do not know for certain the amount.

Ques. You say Collier told you in Jan'y, that he & your brother were on a trade, did he tell you what the terms of the trade was?

Ans. No, he did not tell me.

Ques. Were you staying at your



brother's in Olmeyer where  
the invoice was made?

Ans. Yes -

Ques. When did you leave?

Ans. I think the last of June.

Ques. How do you know the  
business was carried on  
in the name of J. P. Smith  
after the invoice?

Ans. - It was carried on in  
the name of the Olmeyer-Borgain  
Co.

Ques. How do you know this.  
By bills of goods that were  
sent him he bought.

Ques. What sign was kept over  
the door of the concern up to  
the time you left Olmeyer?

Ans. - I do not remember any sign.  
And further this witness  
saith not.

S. L. Smyth.

The foregoing depositions of M. L. Olmeyer, A. P.  
Reese, Rial Lamson & S. L. Smyth were taken  
subscribed and sworn to before me at the time  
and place and for the purposes in the Caption.



mentioned, by consent of parties, by their  
attornies, and by like Consent the further  
taking of depositions in the cause is adj-  
-ourned until the 27th Instant at the  
Law office of James H Orr in Jonesville  
Va. This October 24th/1903.

James H Orr Comr.  
Prothonotary for Lee County Circuit  
Court.

F. P. Smith.  
advs { Defend  
R. L. Cunningham  
Dues

Filed October 31st  
1903.

A. B. Menzies Clerk

|              |             |
|--------------|-------------|
| M. L. Oliver | .50         |
| A. P. Reese  | .50         |
| W. L. Quisen | .50         |
| B. L. Smith  | .50         |
|              | <u>2.00</u> |
| Couriering   | 4.50        |
|              | <u>6.50</u> |

R. L. Orr, Adm.

F. P. Smith



The depositions of John Gilly *J.B. Collier & R.A. Wood*  
taken pursuant to notice hereto attached, at the office of P.L. Penning-  
ton in the town of Jonesville Va. before me George P. Cridlin a Notary  
Public in and for said county, on the 17th day of October 1903, to be  
read as evidence in behalf of the Plaintiff and the petitioners in  
the chancery cause of P.L. Pennington Admr. &c vs Z.P. Smyth.

Present P.L. Pennington for the Plaintiff

C.T. Duncan for petitioners

J.W. Orr for Defendant

John Gilly a witness of Lawful age being first duly sworn deposes  
and says:-

Q.1.-- Were you one of the appraisers that appraised the estate  
of A.F. Collier, deceased?

A.-- Yes.

Q.2.-- As such appraiser do you remember the three notes which  
I now hand you, having been appraised and charged to the adminis-  
trator, and if so who presented and procured said notes at the time?

A.-- These are the notes, and they were presented by Z.P. Smith.  
He said he went to his house and got them.

Q.3.-- I will ask you to file said three notes as a part of your  
deposition, marked Note 1, Note 2 and Note 3?

A.-- I file said notes marked as requested.

Q.4.-- At the time that the appraisement was being made, did not  
you call upon Mr. Smith to know if there was not some thirty, forty  
or fifty dollars on the person of A.J. Collier at the time he was  
shot, and if so state his reply?

A.-- I did ask him if there was not about forty dollars on A.J.  
Collier's person at the time he was shot. He paused a little bit  
without answering, but he finally answered and said that he had  
got fifteen dollars off of Mr. Collier, and his language was about  
this "If I have to acknowledge to it I state that I got fifteen  
dollars of his money out of his pocketbook". He first only gave  
in \$1.22, and then I began to question him about the other money  
and he acknowledged to fifteen dollars more.



Further examined by C.T.Duncan for the petitioning creditors.

Q.5.-- Did you have any dealing with A.J.Collier shortly before his death, and if you state that you did please state what the transactions were and in what firm name they were had?

A.-- I did have some transactions with him. On the 29th day of January, 1903, I went to his store and bought 20 bushels of corn, and gave a check for it to A.J.Collier & Co.

Q.5.-- At that time, or at any other time did Mr. Collier and Mr. Smith, or either one of them tell you anything about what they were going to do with their business, if so tell what they said?

A.-- At the time I bought the corn, they told me they wanted to sell all their corn and produce out as soon as possible that they wanted to move their goods from Olinger to Appalachia.

Q.6.-- You have filed with, and as a part of your deposition, three notes, purporting to be signed by Z.P.Smith, I will ask you to state, if you know in whose handing writing those notes are?

A.-- I can't say that I know. They are not in Collier's handwriting.

Q.7.-- I will now ask you to look at those notes carefully and state, if the body of the notes, and the signature to the same are not in the same handwriting?

A.-- I think they are all in the same handwriting.

Q.8.-- What kind of corn was it you got, and where did you get it?

A.-- I was shelled corn, and I got it out of the store where they were doing business.

Q.9.-- Did you notice what sign was over the door of the store on that day, if so please state what it was?

A.-- I noticed that the sign was <sup>over</sup> ~~xxx~~ the door of A.J.Collier & Co.

Cross Examination by Judge Orr.

X.Q.1.-- How long had you observed the sign being over the door of which you speak?

A.-- That was the first time I had ever observed it. I had not been there before for about one month.



X.Q.2.-- Were the notes that you have filed with your deposition appraised by the appraisers of the estate of A.J.Collier deceased?

A.-- They were.

X.Q.3.-- Was the \$15.00 spoken of, also appraised?

A.-- I think it was at the last part of it. I am not sure the appraise bill will show.

And further this deponent saith not.

wit claim 1 day .50  
24 mi. .96  
\$1.46

John Gilby

J.B. Collier, another witness of lawful age being duly sworn, deposes as follows:

Q.1.-- By Mr. Pennington: What relation are you to A.J.Collier, deceased?

A.-- We were borthers.

Q.2.-- Is your father and A.J.Collier's father still living?

A.-- He is.

Q.3.-- Was your brother A.J.Collier ever married?

A.-- He was not.

Q.4.-- Are you acquainted with Z.P.Smith, ~~plaintiff~~ defendant in this cause?

A.-- I am.

Q.5.-- After your brother was shot did you have any talk with Z.P.Smith, him, with reference to the store there and the goods, and the condition of the affairs between him and your brother, and if so state what was said as nearly as you can?

A.-- I did have a conversation with Z.P.Smith about my brother's affairs and the store. I think it was on Monday morning after my brother was shot on Saturday, I was at the store and saw it was open, and I told Mr. Smith that I thought he had better close it up, and he went on to tell me that he had bought it and had given his notes for, I mean he told me he had bought the goods, He further told me that ~~xxxxxxx~~ the reason why he had bought them and given the notes, that A.J.Collier was in debt, that the notes were given through sham, so they could hold the goods and make some more money.



He said he would turn the goods over to me if I would pay him what he had put in there, some three or four hundred dollars as he claimed, and that if I didn't do that that he was going to try to hold them under the trade.

Q.6.-- By C.T.Duncan: I now show you the three notes claimed by Z.P.Smith in his answer to have been executed by him to A.J.Collier on the 28th day of February, 1903, and will ask you to state if any part of those notes are in the handwriting of your brother A.J.Collier?

A.-- I have examined the notes and they are not in the handwriting of my brother.

Q.7.-- How close do you live to Olinger?

A.-- I live at Big Stone Gap about five or six mile from Olinger.

Q.8.-- On the day after your brother was shot, and when you went to Olinger to see him, did you notice sign over the door where A.J. Collier was doing business, if so please state what that sign was?

A.-- I did notice the sign over the door of A.J.Collier & Co.

Cross Examination by Judge Orr.

X.Q.1.-- Where did the conversation occur between you and Z.P. Smith, which you have detailed?

A.-- It was about the A.J.Collier store at Olinger.

X.Q.2.-- Who was present during the conversation?

A.-- Not any one, except me and Mr. Smith.

And further this deponent saith not.

*Wit Given 1 day .50  
32 mi 1.28  
31.78*

*J.B. Collier.*

R.A.Wood, another witness of lawful age, being duly sworn deposes as follows:

Q.1. By Mr. Pennington: State your age, place of residence and occupation?

A.-- Age 27, residence is at Pridemore, but place of business at Olinger, occupation merchant.

Q.2.-- Were you one of the appraisers who helped to appraise the estate of A.J.Collier, deceased?

A.-- I was.



Q.3.-- Were you at the storehouse where the A.J. Collier & Co. stock of goods was being kept, on the day of the appraisement, and did you afterwards help to invoice that stock of goods?

A.-- I was there on that day, and I did afterwards help take an invoice of said stock of goods.

Q.4.-- What was the character of that stock of goods, that is was it an old and worn stock or new well preserved stock of goods?

A.-- The principal part of, so far as I could ~~inspect~~ was old and worn stock of goods.

Q.5.-- Was that stock of goods worth the invoice price, which you and the other gentlemen making the invoice, set down as the cost price of the said goods?

A.-- Most of it we invoiced at the actual cost price as it was marked, but some of the real old things, we invoiced at what we considered their reasonable cash price. I think a sum of money equal to what we invoiced said stock at, could have been more profitably invested in a new stock of goods, they were old and worn, and known by everybody around there.

Q.6.-- Do you remember the time when Z.P. Smith moved his little stock of goods in with A.J. Collier?

A.-- I saw him moving most of them. It was not very long before Mr. Collier was shot, but I don't remember the date.

Q.7.-- How did he move them?

A.-- He carried them over himself.

Q.8.-- From the bulk of goods which you saw him move, what do you think would be the value of said goods?

A.-- I just don't really know how to place that. It could not be very much though.

Q.9.-- After Smith moved his stock in with Collier, did Collier continue in that store?

A.-- He did.

Q.10.-- How near was your place of business to the Collier store?

A.-- About 30 or 40 feet.



Cross Examination by Judge Orr.

X.Q.1.-- Did you add anything for freight or carriage to the cost of the goods that you say you invoiced at first cost?

A.-- I did not know the cost marked myself, but Mr. Will Stout who had been staying in there gave us the cost marked, and we did not know whether the freight and carriage had been added in in marking the cost or not. As a general rule merchants add the freight in as part of the cost of the goods.

X.Q.2.-- What per cent is usually added by merchants at Dlinger to the first cost of goods in selling the same, for freight & profit?

A.-- ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ From twenty five to fifty per cent on first cost. Some few goods we have to sell at a less per cent than that.

X.Q.3.-- Can you tell what kind of goods it was that you saw Mr. Smith move to the Collier store and what they were reasonably worth?

A.-- There was an old stock of hats that he moved out of our house. I did not see him move these but I saw them at Collier's after he had moved them. They were old stock of hats that had run through several old stocks that had been kept by Bent Thompson, Will Thompson and others. The principal part of the other things that I saw him move was some dress goods and glass-ware and maybe a few shoes. I did not see enough of them to really make an estimate on them, but from what I saw him move they could not have been worth much.

X.Q.4.-- Do you know that what you saw Mr. Smith move was all the goods that he moved into the Collier storehouse?

A.-- I do not.

X.Q.5.-- Did not Mr. Smith act as salesman or do business in the Collier store house after he moved the goods in that you have spoken of?

A.-- Yes, he was in there doing business, and Mr. Collier was in there also.

And further this deponent saith not.

Wit Claims 1 day .50  
18 mi. .72  
\$1.22

J. A. Hood.



Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, a notary public in and for the County of Lee in the state of Virginia, do certify that the foregoing depositions of John Gilley, J. B. Collier and R. A. Wood, were taken, sworn to and subscribed before me at the time, place and for the purpose in the caption mentioned.

Given under my hand this the 17th day of October, 1905.

Geo. P. Cridlin N.P.



R. L. Pennington Adm'r  
vs. { In Chy.

Z. P. Smith.

---

|                |              |
|----------------|--------------|
| Depositions of | Costs        |
| John Kelly     | \$1.46       |
| J. B. Collier  | 1.78         |
| R. A. Wood     | 1.22         |
|                | <hr/> \$4.46 |
| N. P. 2 hrs    | \$1.50       |
|                | <hr/> \$5.96 |

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Sheriff Cost

|                 |              |
|-----------------|--------------|
| Summoning 4 wit | .80          |
| Serving notice  | .50          |
|                 | <hr/> \$1.30 |

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Received from Geo. P.  
Liddin the N. P. before  
whom taken and filed  
October 17th 1903.

A. W. Muncy Clerk



\$600.00

Chingur Va Feb 28/1903

Two years after date & promise to  
pay A. J. Hallier Six hundred  
dollars for goods received.

I owe the home std as to this debt  
J. P. Smyth.



"Note 1"

filed with deposition  
of John Geary.



\$200.00

Olinger Pa Feb 28, 1903.

Six months after date of promise to  
pay A. J. Collier Two hundred dollars  
for good & received.

I wove the home stand as to this debt  
J. T. Smyth.



"Note 2"

filed with rephotom  
of John Galey -



\$200.00

Olinger ca Feb 28, 1907

Nine months after date of promise  
to pay O. J. Oallier Two hundred  
dollars for goods received  
I want the name of this  
man

J. P. Smith.



"Note 3"

Files with depositions  
John. Guley.



*H. C. T. Lewis*

the depositions of James J. Orr, W.P. Wood, R.A. Wood, and M.S. Orr taken before me, Pearl Summers, a notary public in and for the County of Lee and State of Virginia, to be read as evidence in the case of R.L. Pennington, Admr. vs. Z.P. Smith, Defendant. The deposition of Jas. J. Orr to be read in behalf of the plaintiff and the depositions of the other three witnesses to be read in behalf of the petitioning creditors of A.J. Collier in said cause, in the law office of R.L. Pennington in the town of Jonesville, Virginia, on the 12th day of February, 1904, pursuant to notice hereto attached.

Present: R.L. Pennington for himself, as Admr.

Duncan and Cridlin, Counsel for Petitioning Creditors.

James W. Orr, Counsel for Defendant, Z.P. Smith.

Jas. J. Orr being duly sworn deposes and says:--

Q.1. State your age, residence and occupation.

A. Age, 25 years; residence, Dryden; Va.; occupation, farming.

Q.2. Were you acquainted with A.J. Collier in his life-time and, if so, how long did you know him before his death?

A. We used to go to school together. I guess I have known him for sixteen or eighteen years. We were raised right together in the same neighborhood.

Q.3. Do you remember of hearing of his death?

A. Yes, sir.

Q.4. Previous to his death, did you see him at a party at Jackson Flanary's, and have a talk with him there? If so, how long was this before he was killed?

Ans. I could not say exactly. It was not long, though, about three weeks.

Q.5. Did he have any conversation with you in reference to moving his stock of goods then situated at Olinger to Appalachia; and, if so, give his language as near as you can.



The foregoing question, or any answer thereto, is excepted to, because irrelevant and immaterial and cannot affect Z.P.Smith, Defendant, unless spoken in his presence.

Jas.W.Orr, Attorney for Defendant

Ans. He told me that he was going to leave and go to Appalachia as the trade was not justifying him to stay there. He did not say what he was going to do. He did not say anything about moving his goods.

And further this witness saith not.

Signature of witness waived by agreement of counsel.

Witness claims one day's attendance and mileage, which is 74¢ paid by R.L.Pennington, Admr.

R.A.Wood, another witness of lawful age being first duly sworn, deposes and says:--

By Mr. Geo.P.Cridlin, counsel for Defendant:

Q.1. Were you acquainted with the defendant, Z.P.Smith?

Ans. Yes, sir.

Q.2. Were you acquainted with the financial ability and standing of the said Z.P.Smith on and before the 28th day of February 1903?

The foregoing question, or any answer thereto, is excepted to, because this witness has been introduced heretofore and examined by the plaintiff and his evidence is in chief.

J.W.Orr, Attorney for  
Z.P.Smith, Defendant

A. I am not acquainted with it, only from what I could see at the time and from what I have heard.

Q.3. From your knowledge of Mr.Smith's financial standing at that time, whad did you consider to be the worth of his notes to the amount of \$1000.00 executed on the 20th day of February, 1903, \$200.00 payable six months after date, \$200.00 payable nine months after date, and \$600.00 payable two years after date?

A. From what I could see, I could not have considered them



worth very much. It is rather a hard question to answer, considering the time that they were due. If I had been forced to buy them, I cannot say that I would have paid anything for them. Mr. Smith's willingness to pay and his honesty is good, so far as I always knew.

Q.4. If you consider the notes worth anything, or as having any cash value, please state what that value was at that time.

A. Taking in the distance of the time when they were payable and what might turn up, I could not really have offered anything for them. I would not want to speculate on them at all. Of course, if Mr. Smith should live and get along alright, I have no doubt but what he would pay them.

By R.L.Pennington, Admr.

Q 1. Do you know of any other property which Mr. Smith owned about the 20th day of January, 1903, except his interest in the stock of goods which he and Mr. Thompson were selling together and the little house and lot which he had purchased and paid about \$135 for.

A. I do not; that is, his personal property.

Q.2 How long have you known Mr. Smith?

A. I have known him for several years, from the time we were both boys, we lived in the same neighborhood about three mile apart.

Cross examination by J.W.Corr.

Not having the above objection to the introduction of this witness, the defendant, Z.P.Smith, by his counsel proceeds to cross-examine witness.

Q 1. Do you know what Mr. Smith was really worth at the time he bought out A.J.Collier's stock of goods

A. No, I do not.

Q.2, Do you know, or can you tell what he might probably be worth at the time the notes executed for these goods shall become due?

A. No, I do not.



Q. 3 Was not the depriving of Mr. Smith of his stock of goods by the receiver in this cause, a serious interference with him in his business and with his prospects and chances for making money?

A. If it knocked him out of his business or of what little stock he had moved, it interfered with him and cut him out, and for the length of time they had him cut out there, it hurt him.

Q.4 Were you not one of the appraisers that appraised the estate of A.J. Collier, deceased.

A. Yes, sir, I was.

Q.5 Did not you and the other appraisers appraise the notes of Mr. Smith for \$1000.00, at their face or full value and so report it?

A. Yes, we put them down at their value, at what they called for, and sent them in.

Q.6 What is Mr. Smith's reputation and habit in regard to paying his debts?

A. So far as I know, it is good.

Re-examination in chief by Mr. Cridlin:

Q.1 Please state whether or not in the appraisement of the notes heretofore mentioned in your deposition, your appraisement of said notes for their face value of \$1000 was merely a description of the notes, or an appraisement of what you considered their real cash value.

A. We put them down just as we found them and I suppose there is not any valuation attached to them. We put them down for what they called for, just the same as other items, which we we found. We put them down at their face value without any any inquiry as to the real value.

And further this witness saith not.

Witness claims one day--50%.



Mr. W.P.Wood, another witness of lawful age, being duly sworn, deposes and says:

Examination by Mr. Cridlin

Q.1 Please state your age, occupation and place of residence.

A. 50 years; merchant: Bridemore, Va.

Q.2 Are you acquainted with the defendant, Z.P.Smith, and, if so, how long have you known him?

A. I am acquainted with him. I have known him since he was a boy.

Q.3 Were you acquainted with the financial standing and ability of Mr. Smith on and before the 23th day of February, 1903?

A. Well, I had very little knowledge of the financial ability of Mr. Smith on and before the 23th day of February, 1903.

I mean to say by that, that he was in possession of some goods up there at Olinger, but whose they were, I do not know. He said they was his and some others said they belonged to him and Bert Thompson.

Exception--The foregoing answer is excepted to, so far as it states hearsay, as inadmissible J.W.Orr, for Defendant.

Q.4 Please state if you were not, on the 20th day of February, 1903, and prior to that time, in business in the town of Olinger, and did not know something of Mr. Smith's financial standing from your observation and from his reputation.

Exception--The foregoing question and any answer thereto is excepted, so far as it concerns his reputation and hearsay. J.W.Orr for Defendant.

A. R.A.Wood and Sons were doing business at Olinger, of which firm I am aiding to manage, but I was not there very much. I was there when he first opened and I do not think I was back there until after Mr. Collier was shot, and I could not say whether his reputation at that place was good or bad for paying. From what I heard, the wholesale people were pressing him for claims and I do not know whether he was able to pay or not.



Q.5 From your knowledge of Mr. Smith's financial ability and from the reputation that he has so far as you know it, what would you consider to be the cash value of three notes, executed by him on the 28th day of February, 1903, one for \$200 due six months after date, one for \$200 due nine months after date, one for \$600 due two years after date?

A. Knowing as much about the mercantile business as I do, unless he had something back of him that I know nothing of, I would not have wanted to have paid anything like that sum for them, unless it had been secured some way. I would not have wanted to have paid over \$500 for them no way.

Exception--The foregoing answer and all other inquiries relative to the value of said notes are excepted to, as irrelevant and immaterial. The notes were the result of a transaction between Defendant Smith and A.J. Collier, deceased, who were competent parties to contracts for themselves, and it is immaterial whether the notes are good or worthless.

J.W. Orr for Defendant.

By R.L. Pennington, Admr.

Q.1 How long have you been engaged in the mercantile business?

A. About 26 years.

Cross Examination by J.W. Orr.

Q.1 Do you really know what Mr. Smith's financial condition was about the 20th day of January, 1903?

A. No, sir, I cannot say that I do.

Q.2 Can you, with prophetic eye, tell what his financial condition will be when these notes become due?

A. I am no prophet. I cannot tell.

Q.3 Would not Mr. Smith's chances for good financial standing at the time fixed for these notes to become due, probably

have been better, had he not been deprived of his stock of goods by the receiver in this cause?

A. Of course his being deprived of the goods and not being allowed to go on and sell them would have deprived him of the



profits that he might have derived.

Re-Examination in Chief.

By Mr. Pennington.

Q.1 If , at the same time he was deprived of a stock of goods worth \$1000, he was also relieved of the payment of notes to the amount of \$1000, would he have been worsted in any way as to his financial condition?

A. I cannot say that he would.

Q.2 Do you know what became of the stock of goods that the receiver took charge of and that Mr. Smith claimed.

A. The receiver sold the stock of goods to R.J.Wood & Sons for, I think, about \$850 and Mr. Smith wanted to purchase the goods, as I understood it, and <sup>I</sup> agreed that the receiver might let him have them and he did so. I may be mistaken as to the amount. I do not remember , but it strikes me that it was along bout there. I could give my reason why it was I bought them. The receiver was selling the goods out at cost, or less than cost, and it was injuring our trade there and I simply stepped in and bought the goods to stop the low prices he was making , and was willing to pay more for the goods than I thought they were worth, in order to protect our trade there, and was glad to have Mr. Smith take them off of our hands.

Re-cross-examination.

By Judge Orr.

Q.1 You say that Mr. Smith wanted to purchase the goods after R.A.Wood had purchased them from the receiver, now is it not a fact that J.S.Parsons purchased the goods from the receiver and executed his notes, with J.D.Olinger security, for the goods to the receiver?

A. I did not so understand it. I understood that Smith was



buying the goods, and that Parsons and Olinger were going his security.

Q.2 Then, if Mr. Parsons did purchase the goods and gave Mr. Olinger as security on the notes, you were mistaken as to who purchased the goods, are you not?

A. Yes, sir. I would like to explain right there, that my trade with the receiver for the goods had not been closed up and the receiver told me that Smith wanted the goods and I told him to let Smith have them.

Q.3 You are a little hard of hearing, are you not and is it not possible that you may have been entirely mistaken, as to who was purchasing the goods from the receiver, after R.J.Wood and Sons were released from taking them?

A. It is possible that I was mistaken, but I do not think I am. I am very hard of hearing at times.

Signature of witness waived by agreement of counsel.  
And further this witness saith not.  
Witness claims one day--50¢.

Signature of witness waived by agreement of counsel

M.S.Orr, another witness of lawful age, being duly sworn, deposes and says:

Q.1 Please state your age, occupation and place of residence.

A. 23; merchant; Dryden, Va.

Q.2 Were you acquainted with A.J.Collier, deceased?

A. Yes.

Q.3 I will ask you to state if you had a conversation with A.J.Collier about the first of January, 1903, in which he told you that he was in a hard place financially; if so, please state what he said.

A. I had a conversation with him sometime just after Christmas and he asked me to come to Olinger and go in with him, that he was hard up, and I told him I did not think it would suit me.

Q.4 Did he say anything with reference to anyone staying in the



store house?

A. Nothing, only he said Doctor Smith was staying there with him, I understood him to say.

Q.5 In that conversation, or any other conversation which you had with said Collier, did he ever tell you that, if he did break, he could break with money in his pockets?

A. Yes. I heard him say that a half dozen times, or more.

And further this witness saith not.

Witness claims one day and mileage--74¢.

Signature of witness waived by agreement of counsel.

Mr. H.C.T.Ewing, another witness of lawful age, being duly sworn deposes and says:

By Mr. Pennington.

Q.1 State your age, residence and official position.

A. 30 years old; residence, Jonesville; official position, County Court Clerk for Lee County, Virginia.

Q.2. I will ask you to state, if you have any general index to the deed-books of Lee County, in your office.

A. Yes, sir.

Q.3 I will ask you to state, if you have examined those indexes for conveyance of land to and from Z.P.Smith.

A. I have.

Q.4 Did you find any conveyances, either to Mr. Smith, or from Mr. Smith, of any lands in Lee County?

A. I did not.

And further this witness saith not.

Signature of witness waived by agreement of counsel.



Virginia, Lee County, to-wit:--

I, Pearl Summers, a Notary Public in and for the County of Lee and State of Virginia, do hereby certify that the foregoing depositions of Jas. J.Orr, W.P.Wood, R.A.Wood, M.S.Orr and H.C.T. Ewing were duly taken and sworn to before me at the time and place and for the purpose in the caption mentioned.

Given under my hand this 12th day of February, 1904.

Pearl Summers N.P.

|                            |         |
|----------------------------|---------|
| Witnesses: Jas. J.Orr----- | \$ .74  |
| W.P.Wood                   | .50     |
| R.A.Wood                   | .50     |
| M.S.Orr                    | .74     |
| Notary Public              | 5.00    |
|                            | <hr/>   |
|                            | \$ 7.48 |

Paid by R.L.Pennington.



Robt L Pennington Allen

✓  
Depositions  
of  
R. A. Wood -  
H. P. Wood  
Jos. J. Orr  
M. S. Orr

J. P. Smith

Recd from Pennington  
Sumner, A. P. & field  
July 13, 1904 -  
H. T. Curing Clark



May 4, 1904

DEPOSITION.

Robt.L.Pennington, Admr., Plff., )  
vs. ) In Ch'y.  
Z.P.Smith, Deft., )

The deposition of Rial Lawson taken before me, A.M.Coins, special commissioner in the above styled cause, by agreement of the parties, at my office in the town of Jonesville, on May 4th, 1904, to be read as evidence on behalf of Z.P.Smith, in matter of claim filed by him before me as said commissioner in the chancery cause in which Robert L.Pennington, Admr., is plaintiff, and the said Z. P.Smith is defendant.

May 4th, 1904.

Present: Geo. P.Cridlin, Atty. for R.L.Pennington, Admr.;

" J.W.Orr, Atty. for Z.P.Smith.

Rial Lawson, a witness of lawful age, introduced on behalf of Z.P.Smith, touching his account presented against the estate of A.J.Collier, dec'd, being first duly sworn, deposes and says:-

Q.1. State your age, residence and occupation?

A.1. I am 56; live at Olinger, Va., and farm some, and other things.

Q.2. Do you ever keep any boarders at your house?

A.2. I do sometimes.

Q.3. I now show you an account presented by Z.T.Smith against the estate of A.J.Collier, dec'd, and will ask you to state anything you may know in reference to the first item of \$17.56, charged for overshoes.

A.3. I know that A.J.Collier got a bill of overshoes from Smith, but I do not know what the amount was. I cannot be certain as to the time, but it was some three or four months before Collier was killed--I can't be certain as to the time.

Q.4. Do you know anything about the second item on said account?



"Bill of thread, \$6.40?"

A.4. I don't know that I do; but it seems to me that I heard something said about dividing some thread, but I can't say what it was.

Q.5. Do you know anything about the third item--"Burying clothes, amounting to \$4.75"?

A.5. I do not; I do not know who furnished the burying clothes.

Q.6. I will ask you to look at the items charged as buryial clothes and state whether or not the charges for the items are reasonable.

A.6. I would think the charges were reasonable.

Q.7. State anything you may know in regard to the fourth item, "One mattress used by decedent, \$4.00?"

A.7. I saw Collier lying on the mattress while he was shot, at Smith's, and after Collier was dead I saw the mattress ~~lying in the~~ ~~yard near Smith's~~ where it had been thrown out in the garden or lot a little way from the house. I did not see it burned, but I afterwards saw where something had been burned there.

Q.8. State whether or not \$4.00 was a reasonable charge for such mattress as you saw.

A.8. I would think it was.

Q.9. Do you know anything of the fifth item, ~~used by decedent~~ "Bed clothes used by decedent, \$5.00"?

A.9. I saw bed clothing on the bed, I cannot say how many; they were covered with blood and vomit, and blood on the floor. I would think the charge was probably reasonable.

Q.10. State anything you may know in regard to the sixth item, "Balance on board, \$15.00."

A.10. I only know that Z.P. Smith boarded Collier a while before he was shot, and he was boarding there at the time he was shot. He left my house and went there to board. I do not know whether he owed Dr. Smith anything on board at the time he was shot or not. Collier, I think, paid me \$10.00 or \$12.00 per month for board. I do not know, but Collier probably boarded with Smith a month or six weeks.

Q.11. State whether or not there was anyone with Collier, whose board Collier paid, while he boarded with you, and did this person stay with Collier at Smith's any of the time Collier boarded at Smith's?

Objected to because Z.P. Smith has filed no account, nor made



no claim in the account filed against the estate of A.J. Collier, for board for any third person or persons.

Geo.P. Cridlin, Atty. Administrator.

A.11. Will Stout staid at my house a right smart of the time Collier staid there and Collier paid me for Stout's board, and when Collier went to Smith's Stout went also.

Q12. State anything you may know in regard to item seven, "Nursing and care after being shot, \$15.00".

A.12. I know that after Collier was shot Smith took him to his house and he remained there from Saturday evening until Monday about twelve o'clock when he died; he remained there <sup>until</sup> Tuesday when he was buried. I think the \$15.00 was a reasonable charge. I know that Dr. Smith gave him attention and care, thought ~~that~~ I was not in the house but twice, though I went to the house but did not go in.

Q.13. State whether or not Z.P. Smith was a practising physician in that community at that time.

Objected to because immaterial--no charge has been made in the account for medical or surgical attention.

Geo.P. Cridlin, Atty.

A.13. He was.

Q.14. State anything you may know in regard to item eight, "Cash loaned said Collier, \$9.00".

A.14. I was by when Smith loaned Collier \$9.00; it was two or three weeks before Collier was shot. I was by and Collier asked Smith to loan him \$9.00 to pay on some freight; Smith handed him some money, I cannot say how much, as I did not see the denomination of the money; Smith told Collier to pay the other dollar on his (Smith's) freight.

Q.15. State anything you may know in regard to item nine, "Cash received for crate of eggs, \$6.48".

A.15. I was with Smith at Appalachia; he sold to Hale a crate of eggs at 18 cts per dozen and was to ship them right away. I was at the depot at Olinger in a day or so afterwards when T.B. Thompson, Dr. Smith and A.J. Collier started to Appalachia; Dr. Smith was called back on account of the sickness of his wife and he did not go. When Collier came back from Appalachia he told Smith that he had sold the eggs to Hale and had gotten 20 cts per dozen for them; he said that Hale ask him what had become of the Smith eggs and he told him that they had got frozen, and laughed about it. This was probably a couple of weeks before Collier was shot.



of weeks before Collier was shot--may be not more than a week. He said he got the money for the eggs, and that he had made enough on the difference in the price to pay for their dinner, or the drinks or something of the kind. There are generally 36 doz. eggs in a crate; I do not know how many doz. were in this crate.

Cross-Examined by Geo.P.Cridlin, Atty. &c.

Q.1. In what business was Z.P.Smith engaged in during the months of Feb. and March, 1903?

A.1. In the good business and the practice of medisone too, at Olinger station.

Q.2. In what business was Mr.Collier engaged in at the same time?

A.2. In the goods business.

Q.3. Can you state how many prs. of overshoes Collier got from Smith, if so state?

A.3. I cannot tell how many prs. I was by when he was buying from Smith some overshoes and he was picking out such as he wasnted, but I cannot say how many pairs he got. I canna also state that I afterwards saw him taking ~~thxxxxxx~~ some of the Smith's shoes back to ~~xxxxxxx~~ to swap them to get other shoes that would suit his custom.

Q.4. State whether Collier paid for the shoes at the time he got ther or not, if you know?

A.4. I do not know; he did not pay anything that I saw.

Q.5. In answer to question four in you examination in chief, you say that it seems to you that you heard something said about dividing some thread, when was it you heard this conversation, and between whom?

A.5. My recollection was it was in Collier's store; it was between Dr.Smith and Collier, it was perhapse a week or ten days before Collier was shot, and before Smith had gone into the store.

Q.6. Did Z.P.Smith have charge of any stock of merchandise at the time of the death of A.J.Collier, other than the stock of goods which was taken charge of by the receiver in this case?

A.6. Not that I know of.

Q.7. Then if Z.P.Smith did furnish the burying clothes for A.J. Collier, as charged in the account here filed, said things came out of said stock of goods,did they not?



Objected to because immaterial. If Smith had bought the Collier goods and furnished the burying clothes out of that stock, he was furnishing them of his own means, and has never been paid for them by the receiver, or any one else.

J.W.Orr, for Smith.

A.7. I supposed he furnished them out of that stock, but I do not know.

Q.8. In answer ~~six~~ to question ~~six~~, you say that you think that the charges for item of burial clothes are reasonable, and you also state that you do not know anything about the burial clothes, now if you know nothing about the quality or value of these things, how can you state that the charges are reasonable?

A.8. I only speak from the amount charged on the account--I don't think that \$4.75 is an unreasonable amount to put on a dead man, of the articles set out in the account.

Q.9. Do you really know anything as to the quality or value of the articles claimed to have been furnished and charged in this account?.

A.9. I do not.

Q.10. You state you saw Collier laying on a mattress while he was shot at Smith's, state the quality and kind of mattress it was.

A.10. I saw the mattress, I can't state whether it was a fine one or not; it looked like a nice mattress, a clean mattress; I don't know whether it was old or new.

Q.11. Do you know that the mattress that you afterwards saw in the garden was the same mattress he was laying on?

A.11. I do not. It was reasonable to suppose that it was the same one, and I believe it was the same one.

Q.12. Do you think \$5.00 was a reasonable charge for cleaning and washing the bed clothes used by Collier while he was wounded?

A.12. I can't state as to that, but I would not have washed them or have had my folks to have washed them for them.

Q.13. What is the usual charge per day by persons for washing, in Clinger?

A.13. From 50¢ to \$1.00.

Q.14. Could not the ~~six~~ clothing on the bed have been washed in a day?

A.14. I would think so.



Q.14. At the time Mr. Collier was at Smith's house wounded, was not his brother, father, and other relatives and friends there with helping to nurse and care for him?

A.14. His father and brother was there a part of the time, they were at my house part of the time; some of his relatives and friends were around there.

Q.15. Do you not think that \$15.00 is an unreasonably high price to be charged for helping or aiding in waiting on a sick person for the period of about 40 hours?

A.15. I do not think it was under the circumstances.

Q.16. At the time you say you saw Collier borrow from Smith \$9.00, did Collier tell Smith when he would repay the same and do you know whether or not he ever did repay him?

A.16. I don't know that I heard him say when he would repay it; and I don't know whether he ever did repay it or not.

Q.17. In answer to question fifteen, you state that you saw Smith sell to Hale at Appalachia, at 18 cts per doz. and that Smith was to ship them right away. How do you know that this is the same crate of eggs that Collier afterwards claimed to have soled to Hale at 20 cts?.

A.17. Because he said when he returned that he took the label off the eggs that Smith had sent and had sold them to Hale at 20 cts per dozen, as though they were his own eggs.

Q.18. Did not Collier pay Smith for this crate of eggs immediately after his return from Appalachia?

A.18. He did not pay him at that time, but said he would pay him. I do not know what he did afterwards.

Q.19. You ~~was~~ asked in question 13 in your examination in chief, to state whether or not Z.P. Smith was a practicing physician in that community at the time Collier was wounded, to which you answered "He was". Do you know whether or not said Smith was legally licensed to practice medicine in this county at that time?

Objected to because immaterial.

J.W.Orr, Atty. for Smith.

A.19. If he was I do not know it.

Re-Direct

Q.1. You have stated in your cross-examination that you saw Mr. Collier and Mr. Smith dividing some thread



or heard them talking about dividing some thread. State more fully if you can what you mean by that, and was there or not any thing said indicating a sale of thread from Mr. Smith to Mr. Collier? or for what purpose were they dividing the thread?

A.1. My recollection is it was in Collier's store, and Mr Collier said something to Smith about wanting some thread, and Smith told him he woud divide some thread with him. Smith had a store at the time.

Q.2. Did you ever buy any mattresses, and if so at what price?  
Objected to because immaterial,

Geo.P.Collier, Atty.

A.2. Yes; I bought one mattress in my life, at \$4.50.

Q.3. How did this mattress you bought compare in value with the one you have spoken of as ~~being~~ being used by Collier.

A.3. From my observation I do not think there would have been much difference in the value of the two.

Q.4. State whether or not you observed any pillows on the bed used by Collier that were used in supporting him in different positions?

A.4. I did not observe, other than under his head.

Q.5. You have stated that the bed clothes were soiled by the blood and vomit, state whether or not this would damage the bed clothes over and above the expense and labor of washing them, if a person should want to use them again?

A.5. I would think so.

And further this deponent saith not,.

*Rial Lawson*

Witness claims one day, 50 cts, and 20 miles, 80 cts, total \$1.30.

Virginia, Lee County, to-wit:

I, A.M.Goins, special commissioner in the above styled cause, do hereby certify that the foregoing deposition was duly taken under oath, and subscribed before me, and at the time and place above mentioned.

Given under my hand this May 4th, 1904.

*A.M.Goins.*  
.....  
Special Commissioner.



Robt. L. Pennington, Adms.  
vs. { Deposition of Reel Lawson

J. P. Smith.

Deed given



(1)

The deposition of J. B. Thompson &  
M. L. Olinger taken at the law  
office of James W. Orr, in Jonesville Va.  
pursuant to adjournment and by consent  
of parties, on the 27th day of Oct. 1903.  
on behalf of defendant in chancery cause  
of R. L. Pennington Adm'r against  
G. P. Smith, pending in Lee County Circuit Court.  
Present. R. L. Pennington for himself.  
and James W. Orr. for Defendant.

The said J. B. Thompson a witness of lawful  
age and being duly sworn deposes & says.

Ques 1. Please state your age, residence & occupation.  
Ans. I am 34 years of age. I live  
at Appalachia Wise County Va.  
I am Clerk in a store.

Ques 2. Were you acquainted with A. J. Collier  
in his lifetime, and if so how long, and  
are you acquainted with G. P. Smith and  
how long have you known him?

Ans I was acquainted with A. J. Collier.  
I knew him ten or twelve  
years. I know G. P. Smith & have  
known him from three to five  
years.

Ques 3. Was A. J. Collier engaged in the mercantile  
business at Olinger Va, prior to Aug 20th  
1903, and if so what house did he occupy?



Ans. A. J. Collier was engaged in  
The Mercantile business at  
Olinger Va. and he occupied the  
property known as the Thompson  
property. of which I had and  
now have Control

Ques 4 Was L. P. Smith also engaged in the mer-  
cantile business at Olinger at said  
date, Jan'y 20th 1903?

Ans He was.

Ques 5 Did you hear A. J. Collier say anything  
about selling his stock of goods to L. P.  
Smith at any time. If so when and  
where was it, and what was said by  
him?

Ans I heard Mr Collier talk about  
selling out two or three times.  
he said he was talking about  
selling out to Mr Smith, it  
was a few days before we  
commenced to invoice the  
goods. it was about Collier's  
store. and at my dwelling  
house. I heard the talk, he  
asked me what I thought  
about his selling out to Dr  
Smith, I told him I thought  
Dr Smith was all right and



would pay him for the goods the day before the goods were invoiced. Ballier told me that he and Smith was on a deal. and wanted me to help invoice the goods. me and Moran Olinger. in fact he and Smith both asked me to help about invoicing the goods.

Ques 6. Were the goods invoiced and if so by whom and when was it done?

Ans. They were by myself and Moran Olinger. Keeping the invoice and Ballier and me Smith priced and called out the goods, and we put down the price they agreed upon.

Ques 7. How did you & Moran Olinger keep the Invoice, on paper or in blank books.

Ans. We both kept the invoice in blank books. each had a blank book.

Ques 8. I now show you a book exhibited by Moran L Olinger, with his deposition marked "Book". Please examine it and state anything you may know about it, and the entries contained therein?



Ans The book Shown me, is the book in which I kept the invoice and the invoice is Shown from Page (1) to (19)

Ques 9. Will you please file said book with this your deposition, or refer to same as part of your deposition marked "Book?"

Ans I refer to the same as a part of my deposition marked "Book".

Ques 10. Was there any goods in the stock of goods, or produce on hands, that was not invoiced and that Mr Smith did not take, and if so what was it and why not taken?

Ans There was Vinegar and Cider that they did not agree upon. also some Collars, and some Three or four Mens Vests, also a few drings, and some Corn. There was possibly 25 or thirty bushels. None of these things were invoiced. except I did put down the Cider and Vinegar on the invoice. and Ballie & Smith failed to agree on the price and it was afterwards taken off.

Ques 11. What was said & done about the show case and its contents?



Ans. Collier priced the Contents of The Show Case at Twelve dollars, and Smith took it. Collier told Smith if he did not take the Contents of The Show Case, he should not have the rest of the goods at first Collier priced the Contents of The Show Case at Considerable more than \$12.00 and Smith objected to paying the first price and they finally agreed on the \$12.00

Ques 12. After Smith's purchase from Collier, did Smith put his stock of goods in with the Collier goods, and if so, in what house?

Ans. He put a part of his goods in the same building that Collier had been occupying. The house is known as The Thompson property.

Ques 13. Did Smith take an invoice of the goods he put in with the Collier goods, and if so please state anything you may know about the invoice?

Ans. He did take an invoice and I assisted him in taking it. It amounted to about \$490.00

Ques 14. I now show you a book in which there



seems to be an invoice entered. Please examine the same and state anything you may know about <sup>it</sup> its contents.

Ans.

This is the book in which the invoice of The Smith goods was entered by me. My recollection is that the invoice amounted to about \$490.<sup>00</sup> That is the Smith goods amounted to about the \$490.<sup>00</sup> I have a Memoranda and Statement of some articles. That I do not think are on said book, and this statement and Calculation shows the amount of the Smith goods to be \$490.<sup>00</sup> I file said Statement with Book. Marked "Statement".

Ques. 15. Will you please file said Book as part of your deposition marked, "Smith Book".

Ans. I file the same as requested.

Ques 16. Did A. J. Gallier or G. P. Smith ever ~~tell~~ tell you the terms of their trade?

Ans.

~~They did not. Mr Gallier told me the invoicing commenced. That he would give me some money on his goods. I told him I would not do that. I told him I would not do that. I told him I would not do that.~~

Ques 17.

~~Did Mr Gallier ever say anything to you about taking Smith's notes or notes or call on you for bank notes after the invoice of his~~



Ans.

~~goods, if so when and what did he say?~~

They did not. Mr Collier asked me, when they were expecting to make the trade, if I thought Smith could pay him two or three hundred dollars down, I told him I did not think he could. unless he could borrow the money, after some other talk, he then said he guessed he would have to give him some time if he traded with him.

Thurs 17

Did Mr Collier ever say anything to you about taking Smith's notes, or call on you for blank notes, after the invoice was taken, if so please state what he said?

Ans

Mr Collier came to me once or twice after the invoice, and asked me if I had any blank notes. I told him no but I could write them for him. he was talking to me the last time a few days before he was shot. I don't remember of both coming to me together, but they both did apply to me for blank notes.

Thurs 18

The book you have referred to as part of



your deposition shows the Invoice amounted to \$1049.85. Did you hear the parties say anything about some unsettled matters between them outside of the invoice and if so what amount, & what was said?

Ans. I did hear them say something about some outside matters. + I know Collier had bought some Over-shoes <sup>from Smith</sup> and that he owed him also for some Thread. and they said something about a settlement of these matters. and that they could settle later. Collier boarded with Smith some but I do not remember whether he was boarding with Smith at the time the invoice was taken or not.

Ques 19. Do you know whether or not Smith had rented a store house at Appalachia and intended to move his goods there about Feb 28th / 1903?

Ans. yes. he had made arrangement up there for a house. and he told me he was going to move up there, as soon as the house was ready.

Ques 20. After Smith bought Mr Colliers goods did



he continue to do business at the Thompson house, and if so in what firm name, if any?

Ans. He did, and Continued business under the firm name of The Olinger Bargain Co., or house.

Ques 21. I have hand you two bills for goods, one in favor of Norton Grocery Company <sup>\$17.98</sup> & the other in favor of Thomas Andrews & Co. \$23.37 Will you please file them with your deposition as part thereof marked L.B.L.-1. and L.B.L.-2. respectively?

Ans. I file them, and mark them as requested.

Ques 22. Were you one of the Appraisers of the estate of A.J. Collier decd, and when was the appraisment made?

Ans. I was, it was made the 7<sup>th</sup> of March 1903.

Ques 23. Have you a copy of the appraisment kept by you and your associates, if so please file the same as part of your deposition marked "Appraisment".

Ans. I have, and file the same as requested, "marked Appraisment."

Ques 24. Did you on the day of the appraisment tell R.L. Pennington the Admr of A.J. Collier, that G.P. Smith had purchased the said Colliers goods and what you knew about it?



Ans. I think I did tell R. L. Pennington that Smith had bought the goods.

Ques 25. Did you at any time after A. J. Callier was shot, hear James Callier his father request G. P. Smith to take care of A. J. Callier's papers?

Ans. I heard James Callier tell Smith to take care of A. J. Callier's things. I don't remember particularly about the papers. I believe it was the day A. J. was buried. It might have been the next day.

Ques 26. Did Mr Smith produce to the appraisers any papers belonging to A. J. Callier, on the day of the appraisement, and if so what papers?

Ans. There was some little accounts presented, to the appraisers - but they were worthless. The notes executed by G. P. Smith to Callier <sup>were presented</sup> but I don't know who it was that presented them. ~~a few~~ before this Mr Smith had given the life insurance policy to James Callier. A. J. Callier's father

Ques 27. What has been G. P. Smith's standing as to







Ques. 31. Do you think the value of the stock of goods had been reduced below what it was when Mr Smith put the two stocks together?

Ans. I think the stock was about the same as when Smith put both stocks of goods together.

Ques 32. Do you remember when Mr Smith produced to the appraisers the money he had found on A. J. Collier, if so please state what he said about it?

Ans I remember that Mr Smith stated he had taken \$15.00 of the person of A. J. Collier, and he went on to state, that he had loaned Collier \$9.00 and that Mr Collier had sold \$50.00 worth of Eggs belonging to him, and he went on to say that Collier had told him to keep it.

Ques 33. Whose <sup>store</sup> house did Collier occupy before he sold out to Smith and who did he pay rent to, and up to what time?

Ans He occupied the Thompson property, and paid the rent to me up to and including Jan 1903.



Ques 34, Who paid you rent on the property after Jan'y 1903?

Ans Dr B. P. Smith.

Ques 35. What do you consider that B. P. Smith has been damaged on account of the seizure of said goods by the Receiver, and his being deprived of said goods and interfered with in that manner in the conduct of his business?

Ans. The foregoing question is objected to because irrelevant.  
R. L. Pennington Atty

Ans. I consider that he was damaged at least one Thousand dollars (\$1000.<sup>00</sup>)

X Ex

Please tell how you arrive at this sum of damages?

Ans. I am judging from the amt of goods on hand, and what he would have made at Apalachia, and the damage to his Credit,

2 What part of the \$1000 damages is put in by you for loss to his credit?

Ans. I would say \$500.<sup>00</sup>

3 In what particular and how was his credit damaged?



(14)  
Ans. If he was running business I think he was damaged he could not purchase any goods to amount to anything and he has been out of business. and could do nothing for himself

4 Has any person, firm or corporation, to your knowledge, refused to extend or give credit to Mr Smith on account of said goods being taken by the receiver, if so where and when?

Ans. I don't know of his trying to buy any goods.

5 What became of said goods after they were taken possession of by the receiver

Ans. They were sold to J. S. Parsons ~~and~~ and moved to Spalachia Va.

6 Who compose the firm of J. S. Parsons & Co.?

Ans. J. S. Parsons, as far as I know

7 Who has charge of said goods for J. S. Parsons?

Ans. Dr Smith I suppose and a man by the name of Orr stays with him.

8 What if any is the relationship between



with no figures whatever to support them? is it?

Ans. The only way I can answer is The profits he would have made on the goods, and I don't know what they would have been.

16. How long had Smith been merchandising at Olinger before the 20<sup>th</sup> day January 1903?

Ans. About one year.

17 From whom did he purchase his stock of goods when he began, and in what name did he conduct business?

Ans. J. E. Thompson & Co. and he conducted his business under the name of The Olinger Boring Co. or bargain house

18 Did he have a partner, if so who was it?

Ans. I don't know of any partner.

19. Who composed the firm of J. E. Thompson & Co.?

Ans. J. E. Thompson my brother.

20 Do you know what the stock of goods Smith purchased from J. E. Thompson and Co. amounted to if so please state it

Ans. I don't remember the exact amount but it was something like fifteen hundred dollars. he gave notes for a part of the goods, and paid him some money, and assumed some debts.



(15-)

J. S. Parsons & J. P. Smith, etc.?  
Ans. Smith is a son-in-law of  
Parsons.

9. Do you know the invoice amount at which  
J. S. Parsons got said goods?

Ans. I can't state the exact amount,  
but it seems to me that it  
was \$950.<sup>00</sup> + some odd dollars.

10. If said stock of goods only amounted to  
about \$950.<sup>00</sup>, don't you think your es-  
timate of \$500. for loss of profits on it for  
7 months is rather large?

Ans. I was not counting them at that  
amount. I was counting them  
at the original invoices, which  
was \$1049.<sup>00</sup> the Collier Stock +  
and \$490.<sup>60</sup> the Smith Stock.  
The further taking of the  
depositions, is hereby adjourned  
until Friday Oct 30<sup>th</sup> 1903,  
at the same place.

This Oct 27<sup>th</sup> 1903.

H. C. Foslyn J.P.

Met pursuant to adjournment  
on this Oct 30<sup>th</sup> 1903.

11. Supposing said stock amounted to  
\$1539.<sup>60</sup> the aggregate of the two invoices  
above mentioned by you, don't you



(16)  
Thank your estimate of \$500 loss for  
7 1/2 month's time is too large?

Ans. No, I don't think so,

12. What is the net profit per year that  
Merchants are making on stocks of  
Merchandise ~~annually~~ at Olney.

Ans. I could not state the amount.

13. Then if you can not state the amount  
of profits Merchants are annually  
making at that place, how can you  
state that Smith's losses for the 7 1/2  
months since said goods were taken  
in charge by the Receiver would have  
been \$500?

Ans. Smith was expecting to move these  
goods to Apalachia.

14. Is the profit on goods larger at  
Apalachia than at Olney. And  
in this connection you may state  
if you can the net profits which Mer-  
chants are making annually at that  
place?

Ans. I could not state as to the  
net profits. I have not been  
there for a year.

15. Then your estimate of Smith's losses  
by reason of the seizure of said goods  
by the Receiver is a man guess.



with no figures whatever to support them, is it.

Ans. The only way I can answer is the profits he would have made on the goods, and I don't know what they would have been.

16. How long had Smith been merchandising at Olinger before the 20th day of January 1903?

Ans. About one year.

17. From whom did he purchase his stock of goods when he began, and in what name did he conduct business?

Ans. J. E. Thompson & Co., and he conducted his business under the name of The Olinger Bargain Co. ~~House~~ or Bargain House.

18. Did he have a partner, if so who was it?

Ans. I don't know of any partner.

19. Who organized the firm of J. E. Thompson & Co?

Ans. J. E. Thompson. My brother.

20. Do you know what the stock of goods Smith purchased from J. E. Thompson and Co, amounted to if so please state it?

Ans. I don't remember the exact amount but it was something like fifteen hundred dollars. he gave notes for a part of the goods, and paid him some money, and assumed some ~~note~~ debts.



21. Now, do you know whether or not Smith had fully paid for said goods before the 20<sup>th</sup> day of January 1903.

Ans. I know nothing myself, except what Smith told me. he said he had paid the amount he owed J. E. Thompson, but had been served on some of the bills he had assumed, for said Thompson, one of which, a clothing bill amounting to \$75.<sup>00</sup>

22. Were you not interested in the stock of goods sold by J. E. Thompson & Co to Mr Smith?

Ans. No Sir

23. Were you frequently about the place of business of J. E. Smith from Jan'y 20<sup>th</sup> to Feb'y 28<sup>th</sup> 1903.

Ans. I was there a few times. Not very often.

24. Do you know whether his trade during that period was large or small?

Ans. I know nothing about it, only what he told me. he said it was small. I was not about the store much after he bought Collier out.



25. Was it usual at Oregan to sell Stocks of goods on a credit of two years for the longer portion of the stock, and especially without interest.

Ans. I could not state. That, I don't know how it is,

26 Did you ever know <sup>or hear</sup> of such Trade being made at that place until you heard of the one between Smith & Coe?

Ans. I don't remember that I did,

27 By R. L. Pennington

Has Smith settled the notes he executed to J. C. Thompson?

Ans. He has.

27 Were not these notes assigned by Thompson to some wholesale merchants for bills Thompson owed, & were they not placed in the hands of A. M. Gaines Atty. for collection or settlement?

Ans. They were.

28 Were they not settled at 50 cents on the dollar?

Ans. They were.

29 Who paid Mr. Gaines the money Smith or Thompson?

Ans. Smith paid him, through me.

30 Thus was A. J. Coe's shot?



Ans. On Saturday Feb 28-1903.

31 Where did he die?

Ans. On the Monday following.

32- What time in the day was he shot & what time in the day did he die?

Ans. I was not present when he was shot. he died in the fore part of the day Monday.

32 Did he ever tell you anything about being in debt?

Ans. He did. he told me he owed some bills.

34 Did he not also tell you that he was going to sell out, that if he did not his Creditors were going to finish him & if he did not sell or fix his goods in some way so as to get some time to make some more money, they would sell him out or worse to that effect & he would have nothing left?

Ans. No. he told me he was going to sell out. but did not tell me, he would have nothing left.



35 Did he tell you any thing about going to sell out in order to get some time to pay his debts or that he was going to put his goods out of his own name for that purpose or any other purpose of a like nature, or any words to that effect?

Ans. No. he never told me his purpose in selling out. he told me he owed some bills and was going to sell out.

36 When did Smith make the invoice of his goods that he put in with ~~Mr~~ Collier's goods?

Ans. I don't remember the date. but it was sometime, in February and after the invoice of the Collier's goods. The Book will show date.

37 Where were the goods when you made the invoice?

Ans. They were in one of the stores across the Rail Road.

38. Were there part of the goods gave & he had divided between you?

Ans. No Sir.

39 Did not you & Mr. Smith sell goods together in those little store



~~little store~~ houses on the north side of the R.R. at Olney, under the name of the Olney Boring Co or Store, before he went into the Collins house?

Ans. We did not sell together. I sold some goods there for Smith and Smith sold in another house himself. The houses were small and it took both to hold the goods.

40 If I understood you correctly - you state that when Smith moved out of the Woods house part of the stock was placed in one store house & part in another & you took charge of the stock that was placed in the house nearest the R.R., is this correct?

Ans. I did. I stayed in there a part of the time for him, and a part of the time he was in there himself.

41- Did you, your wife or brother or any one else have any interest in that stock of goods except Smith?

Ans. No Sir. not to my knowledge.



42 What became of this stock that you help to sell on?

Ans. Smith sold them to my wife.

43 Did Smith ~~etc~~ pay you for staying in the store if so how much?

Ans. We had no contract, and have never settled the matter.

44 What did your wife pay for the goods she got?

Ans. I think she gave her note to Smith for I think \$323.<sup>00</sup> I don't remember the exact amt.

45 Where was this sale made to your wife?

Ans. on March 21<sup>st</sup> 1903. I believe.

46 Has the note been paid?

Ans. Not all of it. a part has been paid.

47 ~~On the day~~ Do you not know that the sale made ~~to~~ to J. S. Parsons by the receiver was for the benefit of J. P. Smith?

Ans. No. I don't know it.

48 Did you not help to negotiate that trade or deal?

Ans. Yes Sir. I spoke to Mr. Parsons about purchasing that stock of goods.



49 How come you to speak to him about it?

Ans. I happened to meet Mr Parsons and advised him to buy them.  
50 Has Mr. Parnum up to this time engaged in the goods business?

Ans. I do not know.

51 Had your ear heard of it?

Ans. No.

52 Does Mr. Parsons stay at Appleton with the goods?

Ans. He is there sometimes. I saw him there the other day.

53 How many times have you seen Mr. Parnum there since the goods were put at Appleton?

Ans. I don't remember seeing him there but one time, he was there a few days ago.

54 You say in your examination in chief that Smith has charge of the goods & that he has a man with him by the name of Orr do you know what Orr it is?

Ans. I believe his name is John Orr,



Ques.

Re examined.

If Mr Smith put in with the Collier goods \$490.60 worth of goods of his own, and the amount of the entire stock when taken charge of by the Receiver had not been reduced, Did not Mr Smith, <sup>at least</sup> lose the amount of goods he put in?

Ans.  
Ques.

Yes sir.  
I now show you some checks will you please look at same and file them with your deposition as part thereof, marked "check 1," "2," "3," "4" & "5" respectively?

Ans.

I file the same and number them as requested.

The foregoing question and the answer thereto are objected to because immaterial and irrelevant. 2 Because there is no evidence as to where the debts upon which said checks are supposed to be payments were contracted, nor out of what funds they were paid.

R. L. Pummerson &

C. J. Duncan

Ques. If Mr. Smith put in \$490.60 of his own stock & \$1049.85 he bought of Collier - & the same



Stack of goods were properly  
invoiced by the receiver to be  
about \$950<sup>00</sup>, then had not  
the said Smith sold more goods  
out of the stack or disposed of  
them in some way by about  
\$100 than he put in himself?

Ans. I could not answer that  
question, for I don't know how  
the goods were invoiced by  
the receiver.

Ques. If there were \$1539.85 worth  
goods in the store when the  
said Smith took charge thereof  
& when the receiver took charge  
there were only \$950- worth  
of the goods had not the said  
Smith sold or disposed of  
the difference between the  
amount when he went in  
& the amt. that was in  
the store at the time the  
receiver took charge?

Ans. I could not answer it.  
And further this deponent soth not.

Witness claims

J. B. Thompson,

|          |                |
|----------|----------------|
| 2 days   | 1.00           |
| 40 miles | 1.60           |
|          | <u>\$ 2.60</u> |



Ques.

M. L. Ohinger being introduced by defendant, deposes and says.

Please state what damage, if any, E. P. Smith sustained in your opinion by the stock of goods being seized by Receiver Ely?

Ans.

If Smith put in \$490.<sup>60</sup> of his own goods, and the Collier Stock amounted to \$1049.<sup>85</sup> and the stock was taken away from <sup>him</sup> and his business stopped. I should place his damages at seven or eight hundred dollars.

X E

- 1 What other damage has he sustained outside of the supposed \$490.60 of goods claimed to have been put in by him?

Ans.

The public generally, would be apt to doubt his honesty, and he might be refused credit should he desire to enter business again.

2. Do you know of any person, firm or corporation refusing credit to Mr Smith by reason of said receiver taking charge of said goods?

Ans.

I do not, because he has not asked credit.



3. Do you know that he put any other goods into the stock with the Collier Stock?

Ans. I do not. of my own knowledge.

4. Did you ever examine the stock of goods that Smith claims to have <sup>had</sup> prior to his purchase or alleged purchase from Collier?

Ans. I did not.

5. Was not Collier considerably indebted at the time of his alleged sale to Smith?

Ans. He told me, some few days before that, that he owed some. This was in Big Stone Gap. he said he was there to see his father. that his father was to let him have some money.

6. Did Mr Collier give you any reason for selling his stock of goods to Smith?

Ans. He did not.

7. Your helped invoice said stock of goods was it a well selected stock of goods suited to the market at Olinger or was it otherwise

Ans. I did help to invoice the Collier Stock of goods. They were a pretty well selected stock of goods. Suited to the market at Olinger



8 At the time you were invoicing said goods was anything said about the terms of said sale?

Ans. There was nothing mentioned whatever.

9 How not two years credit, without interest on two thirds of the value of said stock an unusual credit at Olinque for a well selected stock of goods suited to the market there?

Ans. I cannot answer that question as I had no dealings there, and knew nothing of their business methods.

Reexamined

Ques Judge Duncan asks you what damages Mr Smith sustained other than the supposed \$490.60 and you in your answer say he probably lost his credit, I desire to ask if he was, or not, damaged on account of being thrown out of business and deprived of the chance to make money by carrying on his mercantile business with the stock on hand?

Ans. I should certainly think he was damaged by being thrown out of business as Smith was.



witness  
clothing  
1 day  
20 miles

And Further This deponent doth Not,

M. L. Olinger,

50  
80  
\$ 1.30

Virginia. Lee County To-wit:

I. Henry C. Foslyn a Justice of the Peace for Lee County Va do Certify That the foregoing depositions of T. B. Thompson and M. L. Olinger, were Taken, Sworn to, and Subscribed before me at the time, place and for the purposes in the Caption mentioned, Given under my hand this the 30<sup>th</sup> day of October 1903.

Henry C. Foslyn J.P.



J. P. Smith  
add<sup>d</sup> 3 Decol  
R. L. Pennington Adv.  
cc.  
Received from H. L.  
Joslyn the J. P. before  
whom taken and  
filed Oct 31st 1903  
A. B. Muncy Clerk

Oct 27-03  
J. B. Thompson. 2.60  
M. L. Oliver. 1.30  
Joslyn J. P. 6.00  
\$ 9.90



COMMISSIONER'S REPORT.

|                                      |        |   |         |
|--------------------------------------|--------|---|---------|
| R.L.Pennington, Adm'r &c., . . . . . | Plff.  | ) |         |
|                                      |        | ( |         |
| vs.                                  |        | ) | In Chy. |
|                                      |        | ( |         |
| Z.P.Smith et al., . . . . .          | Defts. | ) |         |

-----

To the Hon. H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

Your undersigned commissioner, in pursuance of a decree entered in the above styled cause on July 10th, 1903, an office copy of which said decree is herewith filed, having given notice of the time and place of his sitting, by publication in the Southwest Virginian, a weekly newspaper published in Lee County, for four successive weeks, as will appear by a certified copy of the notice by the publisher herewith returned, proceeded on the 1st day of September, 1903, at his office in the town of Jonesville, the time and place designated in said notice, to execute said decree; and the proceedings having been thenceforward adjourned and continued from day to day, and being at length completed as fully as your commissioner is enabled from the evidence before him, the result is herewith respectfully submitted.

Your commissioner is directed by the aforesaid decree:

1st, To convene the creditors of A.J.Collier, both in his individual capacity and as doing business under the firm name of A.J.Collier & Co., and to make separate statements of the different classes of creditors of the said A.J.Collier;

2nd, To ascertain and report whether or not any of the debts against A.J.Collier & Co., in the Mercantile business in controversy, were incurred after the 20th day of January, 1903; and

3rd, To ascertain and report the assets of A.J.Collier, outside of the claim in controversy in this cause between R.L.Pennington, Admr., and Z.P.Smith.

In obedience to the enquiry first above directed, your commissioner files herewith, as part hereof, statement "A", which is a full and complete statement of all the claims that have been filed before him, and that are not resisted by the administrator, against A.J.Collier, A.J.Collier & Co., and Collier & Kelly. The claims reported in said statement are all of equal dignity and



priority, and the total amount thereof, with interest calculated thereon up to March 1st, 1904, is \$999.75.

There is also filed before your commissioner an account by Z.P. Smith of \$83.19 against the estate of the said A.J. Collier. This account was not filed until the 9th inst., and as the same is resisted by the administrator, which will necessitate the taking of proof, your commissioner passes this claim over, to be considered along with the settlement of the administration account of R.L. Pennington, hereafter referred to.

Your commissioner finds only one class of creditors against said Collier, as reported in statement "A", hence he makes only the one statement.

In obedience to the enquiry second above directed, your commissioner reports that none of the debts that have been filed before him against A.J. Collier & Co. have been contracted since January 20th, 1903.

In regard to the enquiry third above directed. Your commissioner having been unable upto this date to secure a settlement with the administrator, R.L. Pennington, of the assets of said estate in his hands, and being unable to obtain said information from any other source, and many of the creditors being continually calling upon him for a report upon their claims in due time for the next term of your Honor's court, without waiting longer upon the administrator, your commissioner here reports upon the other enquiries directed, reserving his report upon the assets of said estate, and the account of Z.P. Smith, to a future date.

And now having reported upon all matters referred by the court, or deemed pertinent by himself, or required by any party in interest, as fully as he is enabled from the evidence before him, your commissioner here respectfully submits this his report, this Jan. 11th, 1904.

..... *A. M. Goins,*  
Commissioner.

\*\*\*\*\*

*(See Statement A" Following).*



The Estate of A.J. Collier, Dec'd,  
In Account With,  
His Creditors.

|                                                       |                 |          |
|-------------------------------------------------------|-----------------|----------|
| To account of King Bros. Shoe Co. vs. A.J. Collier &  |                 |          |
| ✓ Co.--See "Ex.1"--for . . . . .                      | \$152.35        |          |
| " Int. on \$152.20 from 3/1/'03 to 3/1/'04, . . . . . | 9.13            |          |
| To amount due, as of 3/1/'04, . . . . .               | <u>\$161.48</u> | \$161.48 |

|                                                        |                 |          |
|--------------------------------------------------------|-----------------|----------|
| To account of E.W. King & Co. vs. A.J. Collier & Co.-- |                 |          |
| ✓ See "Ex.2"--for . . . . .                            | \$ 88.91        |          |
| " Int. on \$88.60 from 3/1/'03 to 3/1/'04, . . . . .   | 5.32            |          |
| To amount due, as of 3/1/'04, . . . . .                | <u>\$ 94.23</u> | \$ 94.23 |

|                                                     |                 |          |
|-----------------------------------------------------|-----------------|----------|
| To account of Frank D. La Lanne & Co. vs. Collier & |                 |          |
| ✓ Kelly--See "Ex.3"--for . . . . .                  | \$ 51.55        |          |
| " Int. on same from 9/1/'02 to 3/1/'04, . . . . .   | 4.64            |          |
| To amount due, as of 3/1/'04, . . . . .             | <u>\$ 56.19</u> | \$ 56.19 |

|                                                       |                 |          |
|-------------------------------------------------------|-----------------|----------|
| To account of Armstrong, Gator & Co. vs. A.J. Collier |                 |          |
| ✓ & Co.--See "Ex.4"--for . . . . .                    | \$ 90.32        |          |
| " Int. on same from 1/1/'03 to 3/1/'04, . . . . .     | 6.32            |          |
| To amount due, as of 3/1/'04, . . . . .               | <u>\$ 96.64</u> | \$ 96.64 |

|                                                    |                 |          |
|----------------------------------------------------|-----------------|----------|
| To account of Graham Supply Co. vs. A.J. Collier & |                 |          |
| ✓ Co.--See "Ex.5"--for . . . . .                   | \$ 50.44        |          |
| " Int. on same from 12/1/'02 to 3/1/'04, . . . . . | 3.78            |          |
| To amount due, as of 3/1/'04, . . . . .            | <u>\$ 54.22</u> | \$ 54.22 |

|                                                     |                 |          |
|-----------------------------------------------------|-----------------|----------|
| To account of J.P. Bell Company vs. A.J. Collier &  |                 |          |
| ✓ Co.--See "Ex.6"--for . . . . .                    | \$ 58.53        |          |
| " Int. on same from 10/18/'02 to 3/1/'04, . . . . . | 4.81            |          |
| To amount due, as of 3/1/'04, . . . . .             | <u>\$ 63.34</u> | \$ 63.34 |

|                                                       |                 |          |
|-------------------------------------------------------|-----------------|----------|
| ✓ To account of Norton Grocery Co. vs. A.J. Collier-- |                 |          |
| See "Ex.7"--for . . . . .                             | \$ 33.81        |          |
| " Int. on same from 2/10/'03 to 3/1/'04, . . . . .    | 2.14            |          |
| To amount due, as of 3/1/'04, . . . . .               | <u>\$ 35.95</u> | \$ 35.95 |

|                                                   |                 |          |
|---------------------------------------------------|-----------------|----------|
| ✓ To account of Pocahontas Wholesale Gro. Co. vs. |                 |          |
| Collier & Kelly--See "Ex.8"--for . . . . .        | \$ 26.35        |          |
| " Int. on same from 3/8/'02 to 3/1/'04, . . . . . | 2.47            |          |
| To amount due, as of 3/1/'04, . . . . .           | <u>\$ 28.82</u> | \$ 28.82 |

|                                                     |                 |          |
|-----------------------------------------------------|-----------------|----------|
| To account of Kohlhepp & Iula vs. Collier & Kelly-- |                 |          |
| See "Ex.9"--for . . . . .                           | \$ 24.18        |          |
| " Int. on same from 7/1/'02 to 3/1/'04, . . . . .   | 2.42            |          |
| To amount due, as of 3/1/'04, . . . . .             | <u>\$ 26.60</u> | \$ 26.60 |

|                                                    |                 |          |
|----------------------------------------------------|-----------------|----------|
| ✓ To account of Kalamazoo Corset Co. vs. Collier & |                 |          |
| Kelly--See "Ex.10"--for . . . . .                  | \$ 23.25        |          |
| " Int. on same from 7/26/'02 to 3/1/'04, . . . . . | 2.23            |          |
| To amount due, as of 3/1/'04, . . . . .            | <u>\$ 25.48</u> | \$ 25.48 |

|                                                        |                 |                 |
|--------------------------------------------------------|-----------------|-----------------|
| ✓ To account of J. Leopold & Co. vs. Collier & Kelly-- |                 |                 |
| See "Ex.11"--for . . . . .                             | \$ 11.10        |                 |
| " Int. on same from 9/17/'03 to 3/1/'04, . . . . .     | .30             |                 |
| To amount due, as of 3/1/'04, . . . . .                | <u>\$ 11.40</u> | \$ 11.40        |
| TO THIS AMOUNT FORWARD, . . . . .                      |                 | <u>\$654.35</u> |



TO THIS AMOUNT BROUGHT FORWARD, . . . . . \$654.35

To account of Geo.P.Thomas, Jr., vs. A.J.Collier &  
Co.--See "Ex.12"--for . . . . . \$ 87.02  
" Int. on same from 12/1/'02 to 3/1/'04, . . . . . 6.53  
To amount due, as of 3/1/'04, . . . . . \$ 93.55 \$ 93.55

To account of The Barker Hardware Co. vs. A.J.Collier  
& Co.--See "Ex.13"--for . . . . . \$ 96.05  
" Int. on \$93.67 from 6/17/'03 to 3/1/'04, . . . . . 3.97  
To amount due, as of 3/1/'04, . . . . . \$100.02 \$100.02

To account of Hirsch Bros. & Co. vs. A.J.Collier &  
Co.--See "Ex.14"--for . . . . . \$ 19.20  
" Int. on same from 11/25/'03 to 3/1/'04, . . . . . .30  
To amount due, as of 3/1/'04, . . . . . \$ 19.50 \$ 19.50 <sup>16 int = 19.66</sup>

To account of E.A.Brown Co. vs. A.J.Collier--See  
"Ex.15"--for . . . . . \$ 18.35  
" Int. on same from 11/11/'02 to 3/1/'04, . . . . . 1.44  
To amount due, as of 3/1/'04, . . . . . \$ 19.79 \$ 19.79

To account of Pennington Milling Co. vs. A.J.Collier  
& Co.-- See "Ex.16"--for . . . . . \$ 16.30  
" Int. on same from 8/6/'02 to 3/1/'04, . . . . . 1.11  
To amount due, as of 3/1/'04, . . . . . \$ 17.41 \$ 17.41

To account of Gast & Crofts vs. A.J.Collier--See  
"Ex.17"--for . . . . . \$ 14.09  
" Int. on same from 1/1/'03 to 3/1/'04, . . . . . .99  
To amount due, as of 3/1/'04, . . . . . \$ 15.08 \$ 15.08

To account of Morley Bros. & Co. vs. A.J.Collier &  
Co.--See "Ex.18"--for . . . . . \$ 11.35  
" Int. on same from 12/11/'02 to 3/1/'04, . . . . . .87  
To amount due, as of 3/1/'04, . . . . . \$ 12.72 \$ 12.72

To account of Standard Oil Co. vs. A.J.Collier & Co.--  
See "Ex.19"--for . . . . . \$ 7.43  
" Int. on same from 5/1/'03 to 3/1/'04, . . . . . .37  
To amount due, as of 3/1/'04, . . . . . \$ 7.80 \$ 7.80

To account of M.D.Ferry & Co. vs. A.J.Collier--See  
"Ex.20"--for . . . . . \$ 5.48  
" Int. on same from 10/7/'03 to 3/1/'04, . . . . . .13  
To amount due, as of 3/1/'04, . . . . . \$ 5.61 \$ 5.61

To note executed to G.B.Kelly by A.J.Collier & Co.,  
on June 3, 1902, payable six months after date--  
This note assigned--See "Ex.21"--for . . . . . \$ 75.00  
" Int. on same from 12/3/'02 to 1/12/'03, . . . . . .48  
To amount due 1/12/'03, . . . . . \$ 75.48  
By check of A.J.Collier & Co. 1/12/'03, . . . . . 25.00  
To bal. due on note 1/12/'03, . . . . . \$ 50.48  
" Int. on bal. from 1/12/'03 to 3/1/'04, . . . . . 3.44  
To amount due, as of 3/1/'04, . . . . . \$ 53.92 \$ 53.92  
TO TOTAL INDEBTEDNESS, as of 3/1/'04, . . . . . \$999.75

STATEMENT "A".



Fee for this Report, \$ 18.00

Fee charged to R. L. Pennington, Admr.

I, A.M. GOLNS, Special Commissioner in the above styled cause, do hereby make oath that I was diligently employed not less than 24 hours, in performing the services for which the fee above stated is charged, and do so certify, this 11th day of January, 1904.

A. M. Golns,  
Special Commissioner.



R. L. Pennington. Admr.,  
vs. { In Chy.

J. O. Smith et al.

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Commissioner's Report.

---

Report filed Jan. 11, 1904,

A. B. Munsey clerk

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Court's Fee, \$18<sup>00</sup>/<sub>100</sub>.



COMMISSIONER'S REPORT.

|                                            |   |         |
|--------------------------------------------|---|---------|
| R.L.Pennington, Adm'r &c., . . . . . Plff. | ) |         |
| vs.                                        | ) | In Chy. |
| Z.P.Smith et al., . . . . . Defts.         | ) |         |

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To the Hon. H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

Your undersigned commissioner, appointed by decree entered in the above styled cause on Feb. 20th, 1904, for the purpose of settling the administration account of R.L.Pennington, Admr. of the estate of A.J.Collier, deceased, and reporting upon any other debts against the estate of the said Collier, having given notice of the time and place of his sitting, proceeded on May 4th, 1904, at his office in the town of Jonesville, to hear evidence on the claim of \$83.19, presented by Z.P.Smith against said estate. This claim was resisted by the Administrator, and a counter claim of \$172.23 was filed against said Smith. Some depositions were taken at this sitting and the proceedings were adjourned to a future date. Upon the second sitting of your commissioner, the parties came forward and, after some "sparring", or propositions of compromise, ~~the parties~~ mutually agreed to butt or square accounts, the said R.L.Pennington, Admr., to pay the cost of the proceedings before your commissioner, and said commissioner was accordingly directed to report the settlement of this claim to the court. And this was the only claim filed before your commissioner that he was requested to report upon.

In the matter of the settlement of the administration account of R.L.Pennington, Admr. &c., he states to your commissioner that, not having yet fully collected and disbursed the assets of said estate, he therefore, at this time, is not prepared to make settlement of his administration account, and consequently your commissioner passes this settlement without report.

All of which is respectfully submitted, this Sept. 5th, 1904.

..... *A. M. Grims* .....  
Special Commissioner.



Fee for this Report, \$ 5.25

Fee charged to P. L. Pennington, Adm.

I, A.M. GOINS, Special Commissioner in the above styled cause, do hereby make oath that I was diligently employed not less than 7 hours, in performing the services for which the fee above stated is charged, and do so certify, this 5<sup>th</sup> day of Sept., 1904.

A. M. Goins,  
Special Commissioner.

P. L. Pennington, Adm.

vs. Lewis Report #2,

G. P. Smith et al.

Report filed Sept. 5, 1904  
J. L. Pennington  
Clk.

Lewis Fee \$5.25-Pd.





Dec 7 1904

Received from R. B. Pungent Adm. of Ark.  
Callow Estate One Hundred & Thirty Two <sup>100</sup>/<sub>100</sub> Dollars.

As distribute of said estate -

\$132.24

J. H. Callier



COMMISSIONER'S REPORT.

R.L.Pennington, Admr. &c., . . . . . Plff. )  
vs. ) In Chy.  
Z.P.Smith et al., . . . . . Defts. )

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To the Hon. H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

Your undersigned commissioner, appointed by decree entered in the above styled cause on Feb. 20th, 1904, for the purpose of settling the administration account of R.L.Pennington, Admr. of the estate of A.J.Collier, deceased, and reporting upon any other debts against the estate of the said Collier, begs leave to state that he filed his report upon the latter part of the foregoing reference on Sept. 5th, 1904, and to said report, which is made a part hereof, reference is here made for your commissioner's report upon "other debts against the estate of A.J.Collier."

As to the first part of your Honor's reference--the settlement of the Administration account of R.L.Pennington, Admr. of the estate of A.J.Collier, deceased--your Commissioner here files, as part hereof, statement "P", together with vouchers, which is a full and complete statement of the administration account of said Administrator and is full and complete in every particular. As will be seen from said statement the Administrator is charged with what came into his hands and is given credit for all proper disbursements, and that he paid over to the distributee, James H. Collier, on Dec. 7th, 1904, the sum of \$132.24, which settled his administration account in full.

Your Commissioner finding no errors in the account and settlement with said Administrator, Pennington, here recommends the confirmation of the same.

And now having fully reported upon all matters referred by your Honor's decree of Feb. 20th, 1904, your Commissioner respectfully submits this his report, this Dec. 14th, 1904.

.....*A. M. Guinn*....., Comr.



1403

[illegible]



|     |   |                                        |                  |        |
|-----|---|----------------------------------------|------------------|--------|
|     |   | Prot over -                            | 165860           | 181985 |
| Dec | 7 | By Alex for A.M. Sales Comm            | 1000             |        |
|     | 7 | " " " O.E. Const town tax              | 255              |        |
|     | 7 | " " " A.M. Eey Co Trans.               | 1146             |        |
|     | 7 | " " to pay for Recording               | 250              |        |
|     | 7 | " " " " " Accounted Cont of check      | 250              |        |
|     | 7 | " " " Pd Jones H. Callers Distribution | <del>13274</del> |        |
|     |   |                                        | 181985           | 181985 |



Settlement of the Admr.  
Acct. of R. L. Pennington,  
Admr. of A. J. Collier,  
decd.  
~~~~~

Statement "P."



R. L. Pennington, Admr.,

vs } Comrs Rept. # 3

J. O. Smith et al.

Rept. filed Dec. 14, <sup>1904</sup>  
H. T. Cunningham, Clk.

Fee of Comrs \$5.00 Pd.



To the Honorable H.A.W.Skeen, Judge of the Circuit Court of  
Lee County, Virginia:

Your undersigned Receiver, appointed by decree of your honor's Court at its last March term, 1903, in the Chancery Cause of Robt. L. Pennington, Administrator, of the estate of A.J. Collier dec, against Z.P. Smith, beg to report as follows: On the 10th day of March, 1903, I took possession of the said stock of goods referred to in the bill and proceedings, and with the aid of the Sheriff invoiced the same, a copy of said invoice is here filed marked "invoice", and asked to be treated as part of this report, and on the 13th day of March, I disposed of the said stock of goods and realized therefrom the sum of \$916.38, of this amount \$73.38, was <sup>a</sup>bid cash in hand, and for the residue, I took the note or bond of John S. Parsons, with John D. Olinger security, due in 3, 6, 9, 12, 15, & 18 months with interest from date, which I deem good.

Your Commissioner thinks that he obtained a fair price for the Stock of goods, as many of them were old and had been in stock a long time and were remnants. It might <sup>be</sup> proper for your Receiver to state that, he first Contracted to sell this stock of goods to R.J. Wood & Sons, at the price of \$866.38, but late in the day John S. Parsons made the bid of \$916.38, and your Receiver by an agreement with R.J. Wood & Sons, transferred the bid to Parsons, with the understanding that the profit on the sale was to be equally divided.

There were no notes or accounts of any worth to be taken charge of, by your Receiver to be collected due A.J. Collier & Co. and none came to my hands. Your Receiver's account stands as follows:

1903,

|              |                                             |           |
|--------------|---------------------------------------------|-----------|
| March, 13th; | To amount of sale of goods                  | \$916.38  |
| " " "        | By amt' of expences to self,                | \$6.32    |
| " " "        | " "paid J.C. Wolfenbarger, Clerk hire,      | 5.26,     |
| " " "        | " " "Sheriff Mileham, all fees & expenses-  | 9.54.     |
| " " "        | " " "H.P. Andis, for copying invoice,-----  | 1.50      |
| " " "        | " " "C.C. Hyatt, for Bond,-----             | 10.00     |
| June, 20th'  | " " Paid R.J. Wood & Sons, part of profits, | 25.00     |
|              |                                             | \$ 57.62  |
|              |                                             | \$858.76. |

At this date after retaining a Commission of 10% on the amount actually collected there is a balance of cash in your Receiver hands of \$136.76, subject to your honor's order the residue is not



yet due. This the first day of July, 1903,

Respectfully Submitted.

M. G. Ely,  
Receiver &c.



Robt. L. Pennington adum  
vs. Report of Receiver M. H. Ely.

L. P. Smith Deft

Filed July 1st 1903.

A. B. Mursey Clerk



The Estate of A. J. Collier deceased.

|       |           | To L. P. Smith                                |         | Dr.             |
|-------|-----------|-----------------------------------------------|---------|-----------------|
| 1903. | Feb.      | To bill of Over-shoes.                        | ✓ L. 7. | \$ 17.56        |
| "     | "         | " bill of Thread.                             | ✓ L. 4. | 6.40            |
| Mr.   | "         | Burying clothes - one pair shoes              |         | 2.50            |
|       |           | one shirt                                     |         | 1.00            |
|       |           | One Tie                                       |         | .40             |
|       |           | One collar                                    |         | .10             |
|       |           | One soap                                      |         | .05             |
|       |           | Black                                         |         | .50             |
|       |           | Cotton                                        |         | .20             |
| 4.    | Agreed to | One mattress, used by decedent.               |         | 4.00            |
| 5.    | " "       | Bed clothes " " "                             |         | 5.00            |
| "     | 6         | To had on board.                              |         | 15.00           |
| "     | 7         | " Nursing & care after being shot. Agreed to. |         | 15.00           |
| Feb.  | 8         | " cash loaned said Collier Agreed to.         |         | 9.00            |
| "     | 9         | " " received for crate of Eggs. Agreed to.    |         | 6.48            |
|       |           |                                               |         | <u>\$ 83.19</u> |

Virginia, Lee County, to wit: -

This day L. P. Smith personally appeared before me and made oath that the above account of \$83.19 in his favor against the estate of A. J. Collier deceased is just and unpaid and should bear interest from March 2nd/1903. Given under my hand this October 27th/1903.  
H. C. Joslyn J. P.

Virginia, Lee County, to wit.

This day L. B. Thompson personally appeared before me and made oath that, he has personal knowledge of nearly all the items in the above account, - that is of the, over-shoes, Bill of Thread, Burying clothes, and that A. J. Collier loaned at L. P. Smith's before and after he was shot, and lay on



a mattress & used bedclothes and that said  
 Smith nursed and took care of him & he heard  
~~Smith admit the sum of \$9.02 & \$4.00 to Smith.~~  
 And if any of the above account has ever been  
 paid he has no knowledge of it, and that  
 the above account and charges therein are  
 reasonable. Given under my hand. Oct 27<sup>th</sup> / 1903.  
 H. C. Joslyn J. P.

This act is resisted & strict legal  
 proof is required thereof  
 Jan 9, 1904 -

Presumptive Provs Atty  
 for R. L. O. Adams -

Ag. P. Smith

vs Acct \$83.19

J. J. Galliers Est.

This account is not  
 acted on, but passed  
 to be considered along  
 with the administration  
 account of R. L. O. Adams  
 Com: Admin. & Co.  
 This Jan. 9, 1904.

A. W. Gowers,  
 Commr

J. P. True

50



# Appraisement of Property of J. Coccis Olinger Va.

3/7/03.

|                              |        |
|------------------------------|--------|
| Insurance Policy             | 100000 |
| Ac J. H. Reaser              | 3000   |
| Tools of P. Smyth            | 2000   |
| " " " 9 mos                  | 2000   |
| " " " 1 yr                   | 6000   |
| Gun - Marlin                 | 500    |
| Cash -                       | 122    |
| Saddle -                     | 300    |
| Coal of P. Smyth             | 500    |
| Cash " "                     | 1500   |
| R. L. Pennington Cash        | 659    |
| Total on Invoice of P. Smyth | 4900   |

21481



Appraisement

5/7/1903-

J. B. Thompson  
James Kelly R  
R. L. Wood

C. D. Bailey

Appraisement.

Exhibit, with J. B. Thompson's  
~~Appraisement~~ depts.

Thompson



Sworn P. P. M.

Copyright, 1894, by E. N. MAXWELL. All rights secured.

AFFIDAVIT ON WRITTEN NOTES OR ACCOUNTS.

Printed and for sale by Maxwell & Co., Louisville, Ky.

[If against Assigned Estate this form is sufficient if verified by Claimant. If against Decedent's Estate fill up both forms.]

STATE OF KENTUCKY,

County of

Jefferson }  
Sct.

In the matter of Account due Hirsch Bros Co  
from the estate of A Hallier & Co deceased or assigned<sup>(1)</sup>:

This day came Louis Hirsch who being first  
duly sworn, deposes and says he is one of said creditor firm

Composed of David Hirsch, Ben Hirsch, Leon Hirsch  
& Louis Hirsch and that the

Account hereto attached against the estate of A Hallier & Co  
for Nineteen 20/100 Dollars,  
100

is a just demand and has never been paid; and that there is no offset or discount  
against the same, or any usury therein.

<sup>(3)</sup> And this affiant further states that the account herein claimed is due for the articles  
or services mentioned therein, and that the same were sold and delivered or rendered  
by said claimant to the said A Hallier & Co  
at their special instance and request and that they promised to pay the sums  
therein charged.

Subscribed and sworn to before me by Louis Hirsch  
this 18 day of March 1903

My commission expires Jan 6 - 1904 Louis G. Gorman

(1) As case may be. (2) If a Corporation, that he is President or Secretary, adding on blank line below under the laws of what State it is organized. (3) If the claim  
is other than an open account erase this entire paragraph.



This form is unnecessary except upon Open Account.

STATE OF KENTUCKY,  
County of Jefferson } Sct.

In the matter of the account due Hensch Bros & Co  
from the estate of A. J. Hallie, decd deceased, ~~or assigned~~(\*):

This day came Peter J. Schueler Jr a witness for said claimant,  
who being first sworn, deposes and says that he has examined the account hereto  
attached, which is for Nineteen 20/100 100 Dollars,

and that he knows that the article<sup>s</sup> mentioned in said account, ~~or services rendered~~(\*),

~~was~~ sold and delivered ~~or rendered~~(\*) by the said claimant to the said

A. J. Hallie, decd that he knows the value of same and  
that the charges are reasonable, that he ~~has~~ no interest therein, and said account is  
correct.

Subscribed and sworn to before me by Peter J. Schueler Jr

this 18 day of March 1903

(As case may be.)



ALL CLAIMS FOR REDUCTION MUST BE MADE IN FIVE DAYS.  
DAVID HIRSCH.

BENJ. H. HIRSCH.

PAY NO MONEY TO AGENTS WITHOUT WRITTEN AUTHORITY FROM US.

LEON E. HIRSCH.

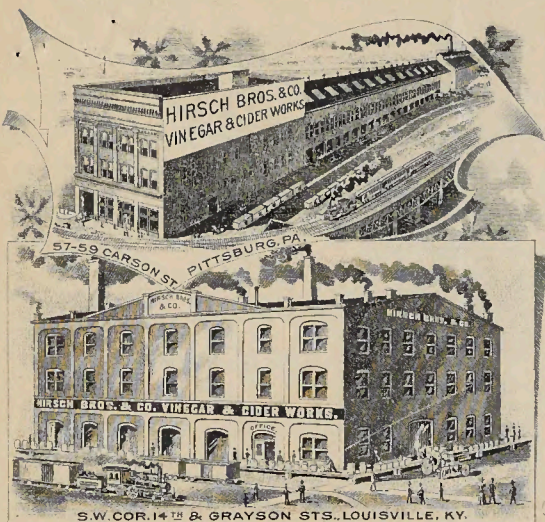
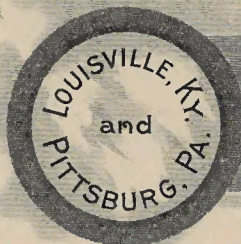
LOUIS H. HIRSCH.

# HIRSCH BROS. & Co.

MANUFACTURERS OF

Vinegar, Cider,  
Sauce, Catsup AND Mustard.  
**PICKLES.**

ALL VINEGARS WARRANTED PURE  
AND TO PRESERVE PICKLES.



S.W. COR. 14<sup>TH</sup> & GRAYSON STS. Louisville, Ky. Nov. 25-1903

SOLD TO A. J. Collier and Co.

TERMS: \_\_\_\_\_ Or \_\_\_\_\_ Percent off \_\_\_\_\_ Days.

ALL BILLS NOT PAID WHEN DUE SUBJECT TO SIGHT DRAFT WITHOUT NOTICE.

These goods shipped from Louisville, Ky. Please send remittance to above address.

Charged. Val.

16 Emery Phosphate  
16 Peach Phosphate

@ 60

960

@ 60

960

1920



"Ex. 14."



Statement,

Pennington Gap, Va., Mich 14 1903

Mr. Collier & Co

Olinces Va

In Account With

1902 Pennington Milling Co.,

|       |                     |     |               |
|-------|---------------------|-----|---------------|
| Aug 6 | 400 lbs S. L. Flour | 860 |               |
| "     | 10 bu. meal         | 850 | 17 10         |
|       | Less freight        |     | 80            |
|       |                     |     | <u>\$1630</u> |

Virginia Lee County to wit  
The foregoing accounts  
against A & Collier & Co. amounting  
to \$1630 as of August 6/1902 was  
this day sworn to in due  
form by J. A. Tubbs President  
of Pennington Milling Co. before  
me in my County aforesaid  
Given under my hand this  
Month 4/1903. My Commission Expires  
December 1905.

Alf Bryan

Notary Public



Hyatt

"Ex. 16."



Folio 374

Statement.

Richmond, Va. May 1 190<sup>3</sup>

MA Lottier &amp; Co

Olinger Va

In acct with

Standard Oil Company.

02

Second &amp; Stockton Streets Manchester.

To Account Rendered.

" Invoice "

Dec 10

743



# Standard Oil Company

JOHN M. WALKER,  
SPECIAL AGENT.

Richmond, Va., MAY 2, 1903.

Account Vs. A. J. Collier & Co.

Messrs. Pennington Bros.,

Jonesville, Va.

Gentlemen:-

We herewith hand you statement of our account vs. A. J. Collier & Co., of Olinger, Va. We are advised that you are settling up Mr. Collier's estate, and, if so, we would be glad if you would let us have remittance for the enclosed account. Please acknowledge receipt of this and advise us.

Yours truly,

STANDARD OIL COMPANY,

S. A.

Enc.



P. P. P.

"Ex. 19"

MAY 2, 1903.

Account Vs. A. J. Collier & Co.

Messrs. Pennington Bros.

Jamesville, Va.

Gentlemen:-

We herewith send you statement of our account vs. A. J. Collier & Co., of Olinch, Va. We are advised that you are settling up Mr. Collier's estate, and we would be glad if you would let us have assistance for the same account. Please acknowledge receipt of this and advise us.

Yours truly,

STANLEY O. STANLEY

S. A.

Enc.



R.L.Pennington, Admr.)

vs )

Z.P.Smith )

Brief for Plaintiff.

On the 9th day of March, 1903, the plaintiff filed his bill for an injunction against Z.P.Smith, asking that said Smith be restranied from selling and disposing of a stock of goods which plaintiff claims was the partnership property of A.J.Collier & Co., which partnership consisted of A.J.Collier and Z.P.Smith Plaintiff alleges in his bill that, after A.J.Collier was killed on the 2nd day of March, 1903, the said Smith took charge of the entire partnership property and set up sole claim thereto under the pre-tense that he had purchased the said stock of goods during the life-time of said Collier, and was entitled to the same under the so called purchase . Plaintiff alleges that he demanded an inventory of stock of goods and statement of the condition of the partnership, and that said Smith refused to make any and claimed that he was the sole owner of said stock of goods. Upon the plaintiff's bill an injunction was awarded against said Smith preventing him from disposing of said goods, and a receiver was appointed to take charge of said goods and dispose of them and hold the proceeds subject to the future order of the court in this cause. On the 9th day of July, 1903, the defendant, Z.P.Smith filed his answer to the said bill, in which he states, that on the 20th day of January, 1903, he had purchased said stock of goods from the said A.J.Collier at the invoice price of \$1049.00, and that he had executed to the said Collier on the 28th day of March (the day on which Collier received the fatal wound) notes to the amount of \$1000.00, one of which was made payable six months after date for \$200.00, one for \$200.00 nine months after date, and one for \$600.00 two years after date. E.W. ing & Co. and other creditors of A.J.Collier & Co. filed their pe-



titions in the said suit, making said Pennington, administrator, and said Smith defendants to said petitions. Said petitions first alleged that, said Smith and said Collier were conducting a partnership business under the firm name of A.J. Collier & Company, and that, after said Collier was dead, the said Smith undertook to cheat and defraud the estate of A.J. Collier and his creditors out of the assets of the firm by claiming a pretended sale of the goods of Collier to him. They then say that, if mistaken in this part of the allegations of their petitions, that they then allege that Z.P. Smith and A.J. Collier colluded together to defraud, hinder and delay the creditors of the said Collier by entering into a sham deal with reference to the said goods, in which it was agreed that said Smith should take the said goods in his own name and execute to the said Collier sham notes to the amount of the invoice of said debt due and payable at a distant date. The bill of the complainant, the answer of the said Smith, and the petitions of said E.W. King & Co. and other creditors of A.J. Collier & Co. prove the issue that has been made in this case. By decree entered in this cause on the 1st day of July 1903, E.M. Goins was appointed special commissioner to ascertain the indebtedness of A.J. Collier & Co., which he has now done and, according to his report, there is \$999.75 indebtedness out side of the sums paid out by the administrator, which amount to the sum of \$\_\_\_\_\_, as shown by the report of said administrator filed in this cause. Said complainant, said Smith and said petitioning creditors have taken their respective proofs tending to support their several contentions upon the issue that has been made.

Proof in the Case.

First-by the Administrator--.

The complainant introduces John Gilley, one of the appraisers appointed to appraise the personal estate of the said A.J. Collier, deceased, who states that, Smith, while the appraisment



was being made, went off somewhere and got some notes, which he says that Smith said he got at his house. Witness filed these notes with his deposition and they are the notes referred to in the plaintiff's bill. The witness states that Smith first denied getting any money off of Collier's person after he was shot, except the sum of \$1.22, but that, after he had questioned him severely, Smith said, "If I have to acknowledge to it, I state that I got 15.00 out of his pocket book". The witness further states that on the 29th day of January, 1903, he bought some corn at the store of A.J. Collier & Co. and gave his check payable to A.J. Collier & Co.. He says that at the time he bought the corn, both Smith and Collier were in the store and each selling and trying to sell the stock of goods that was there. He further states that Collier said to him in the presence of Smith that they (that is, Smith and Collier) wanted to sell all their corn; that they were going to move their goods to Appalachia. Witness further states that the sign of "A.J. Collier & Company" was over the door.

The administrator introduced J.P. Collier, who is a brother of A.J. Collier, deceased, who states, that on Monday after his brother was shot on Saturday, that he asked Smith to close the store and that Smith said to him, that he had bought the goods and had executed some sham notes, so that they could hold the goods and make some more money. Witness states that Smith stated to him, that A.J. Collier was indebt and the notes were given through sham, so that they could hold the goods and make some more money. Witness further states that Smith offered to turn the goods over to him, if he would pay him the three or four hundred dollars, which he had put in. He also states that over the door of the concern was the sign of "A.J. Collier & Company".

The administrator introduced another witness, Mr. R.A. Wood, a merchant. Witness states that he is doing business within



forty feet of the concern of A.J. Collier & Co. and was, at the time that Collier was killed. He states that he helped to invoice the stock of goods that was on hands at the time that the receiver took charge of them, and says they were an old stock, very much run down, had been shifted from place to place, and were not worth the invoice price at which they were set down.

Defendant Smith's Proof.

Defendant Smith introduced M.L. Olinger as a witness, who states that Collier told him that he was thinking of selling out to Smith, and says that Collier asked him if Smith would be all right if Smith's father would sign the notes with him. He says this was in January, 1903. Olinger says that he helped to take an invoice of the stock of goods at the request of Collier, and that the invoice book shows that there was \$1049.85. On cross examination, he states that after the invoice was taken, he saw Collier in the store selling and trying to sell the goods.

Defendant introduced A.P. Reese, who is a brother-in-law of Smith. This witness says, that he was in partnership with Collier from September or October, 1902, until in January, 1903. He says that he bought an interest in the store at four hundred and odd dollars and sold out to Collier for \$75.00 and the return of his notes that he had given for the purchase of said interest and the accounts of about \$40.00. Witness says that, after he sold back to Collier, Collier told him, that while he was at Norton, Va. he had gotten in debt and that his creditors were going to push him for his debts, and, if they did, he would not have anything left, and he was talking of selling at that time to Z.P. Smith. On cross-examination, he further states that Collier stated to him that, unless he would sell out, his creditors would run him to a lot of cost and sell him out.

Defendant introduced Rial Lawson, whose testimony is in regard to a transaction about some eggs <sup>and</sup> is not material to either



of the issues represented in this case.

Defendant introduced T.B.Thompson, who says that he heard Collier say something about selling out to Smith, and says that he helped him to invoice the stock of goods. He says also that he helped Smith invoice his stock of goods, which he says amounted to the sum of \$490.00. On cross examination, the witness says that Collier told him he owed some bills and was going to sell out.

Deduction from Proof.

Now it is contended by the administrator, that the proof shows that Smith and Collier were partners, and that, after Collier was killed, Smith undertook to defraud Collier's estate by taking sole possession of the goods and executing the three notes mentioned in the bill. The administrator contends that Smith expected, by this course, to be able to obtain possession of the goods on long time, and that, while the notes executed for the purchase price of the goods were maturing, he could dispose of the goods and, being insolvent himself, could thereby appropriate and make use of the whole of the said goods without giving anything at all in return for the goods. The bill alleges that Smith is insolvent, he admits in his answer that he is a poor man, and the proof in the case shows that his obligation is not worth 25¢ on the dollar. The proof, therefore, in the case is that Smith is insolvent and was so at the time that he claimed to have purchased the goods.

Now A.J.Collier's creditors come into the suit and first say the statements of the plaintiff's bill are true and that they adopt the allegations of the said bill as a statement of the facts to be alleged in their petitions. They then make the further statement that, if mistaken in this part of their contention, they then allege that Collier and Smith entered into a collusion together to hinder, delay and defraud the creditors of A.J.Collier by entering into an agreement by which Smith was to pretend to have bought the goods, and to execute sham notes to Collier on long time, so as to



put off the creditors of A.J. Collier. We are sorry to have to admit that there is evidence to support the contention of the creditors of said A.J. Collier that Collier was implicated in the fraud, as well as evidence to support the contention of the administrator. The following facts go to prove that Collier and Smith had entered into a partnership and were, at the date of Collier's death, operating a partnership business with an interest therein in proportion to the amount which each had put into the concern. After the invoice was taken and Smith had moved in his stock of goods, Collier continued in the store just as he had before. John Gilley says that he bought corn at the store and paid A.J. Collier & Co., not A.J. Collier, and he says that Smith and Collier told him that they were going to take their goods to Appalachia. Mr. Olinger says that, after the invoice was made, he saw Collier in the store selling and trying to sell what goods were there. R.A. Wood, a merchant, who did business within forty feet of the store, says that Collier continued to stay in the store up to the time of his being shot. He says, also, that the sign of "A.J. Collier & Company" remained over the door. The notes which Smith had executed to Collier were all in the handwriting of said Smith and were in his possession at the time of Collier's death. Before Smith's stock of goods was put in with the Collier stock, an inventory and invoice was made of that stock. Now, if Smith had bought out Collier, why did the business continue to be run under the name of A.J. Collier & Co? Why was it that they talked of moving their goods to Appalachia? Why was it that corn was bought out of the store and check made payable to A.J. Collier & Co.? Why was it that the notes executed for the purchase price of the goods were in the handwriting of Smith and in his possession and instead of being for the full amount of the invoice price of the goods, were for the even sum of \$1000.00? Why was it that Smith was careful to make out an inventory and invoice of his stock of goods when the two stocks were put together, if he had made an absolute purchase of the Collier



stock. On February 26, 1903, only two days before Mr. Collier received the fatal wound, he addressed a letter to Mr. A.M. Goins, who had for collection a claim against A.J. Collier & Co. in favor of Frank DeLalade, in which he says, "I have been in a close place and trade is dull". These facts fully convince us that there certainly existed a partnership between said Smith and said Collier, and that said Smith undertook to defraud the estate of said Collier after he was dead. There are, however, facts proved in the case, which bear out the contention of the creditors, that both Collier and Smith were implicated in a scheme of fraud to defraud the creditors of A.J. Collier & Co. First, Collier told Thompson that he owed some bills and was going to sell out. Second, A.P. Reese says that in January, 1903, Collier told him that he was in debt and that his creditors were pushing him and he was going to sell out and, if he did not sell out, his creditors would sue him and he would have nothing left. Third, J.B. Collier says that Smith told him that the reason why Collier had sold him the goods was that A.J. Collier was in debt and that the notes were given through sham, so that they could hold the goods and make some more money. Fourth, the notes were executed on six and nine months and two years time.

#### The Law in the Case.

Wait on Fraudulent Conveyances--Sec. 240--says: "It must be remembered that every delay, to which a creditor is subjected in the collection of his debt, is not necessarily fraudulent. Insolvency, as is elsewhere shown, does not deprive a debtor of the right to sell his property, and, if a sale is made in good faith and without any intent to hinder, delay and defraud creditors, the mere fact that it was made upon credit does not require that it should be declared invalid. The court, in Roberts vs. Shappard says, 'The sale upon credit of part of their property by an insolvent firm, is a circumstance which may be considered with others bearing upon the question of fraudulent intent, but alone does not necessarily establish it.' "



Under the head of "Prima Facie Cases of Fraud, Wait, in the same work above quoted--Sec. 243-- says, "In Dabney vs Shappe it is said that a sale of an entire stock in trade to a clerk in the employ of the vendor is colorable or fraudulent, as to the course of the vendor, when the vendee has no means except that he receives ten dollars a week for his services, and where he pays nothing at the time of the sale, but gives his unsecured promissory notes for the whole amount of the purchase money, and no public notice is given of the change, but the business sign remains the same and the vendor is frequently about the premises."

The fact that possession remained with Collier, unless this was a case of partnership, makes out a case of prima facie fraud.

The same authority above quoted, in Sec. 248, sums up the authorities on this subject and says: "The prevailing policy is to consider the absence of a change of <sup>possession</sup> ~~possession~~ as prima facie, or presumptive evidence of fraud." It seems to be a universal doctrine supported by the English cases and the state courts of America and the supreme court of the United States, that retention of the possession of personal property after an absolute sale, is prima facie fraud, as to creditors of the vendor. In the case of Benjamin vs. Madden (94 Va.--page 69) Judge Riley makes this statement: "The retention of the possession of personal property by the vendor after an absolute sale, is prima facie fraud as against creditors of the vendor, but such presumption may be rebutted by proof." In a note appended to the case of Davis vs. Turner in the Va. Repts. Annot., Mr. Michie sums up the authorities on this question on page 423 of the case above referred to, in which he says: "For many years the Virginia decisions following the English case of Edwards vs. Harben and the case of Hamilton vs. Russell (U.S.--1 Cranch-309) seems to have regarded a stated rule that an absolute sale of personalty, the possession of which remains with the vendor is fraud per se."



Mr. Michie then refers to the various cases which support this doctrine. Reference is made to that work for a full statment of all the authorities. In the case of the Mossy Creek Woolen Mill vs. Anderson & Maness reported in 100 Va--442, a case with which this court is perfectly familiar, the court held Anderson and Maness responsible to the creditors of J.T.Kyle, their vendor, when the proof in that case showed that Maness and Glass had taken the stock of goods and paid every cent of the contract price in cash. Yet the circumstance of that case was such, that, while there was no positive proof of the implication of Anderson and Maness in the fraud that was perpetrated by Kyle upon the creditors, yet Anderson and Maness had good reason to believe, from the conduct of Kyle and the price that they were paying for the goods, that Kyle was in debt and it was his purpose to get the proceeds of the sale of the stock of goods in his pocket and leave his creditors without a cent and compel Anderson and Maness to satisfy the said creditors the amount of their several claims. We consider this a much stronger case of fraud proven, because in this case not one single cent of the purchase price of the said goods had been paid, and said Smith, by his own confession, knew that Collier was in debt and that his purpose in selling out, was to place his effects beyond the reach of his creditors. Smith, therefore, became the party to the fraud, and is responsible to the creditors of A.J.Collier & Co. to the full extent of their claims, or at least, until he has accounted to said creditors for the full amount and value of the said stock of goods. Some of these same facts which argue that Collier was implicated in the fraud, which Smith undertook to perpetrate, also argue the existence of a partnership between Smith and Collier, as well as they argue the contention of the creditors, and when the whole evidence is summed up, we believe that the weight and preponderance of the evidence is in favor of the contention which the administrator makes. If such is the case, then Smith should be required to account for all



the merchandise disposed of by him and all the accounts and moneys collected by him and make settlement with the estate of said Collier for such amount as he has received.

Burden of Proof.

The plaintiff has alleged fraud on the part of Smith, and the creditors of Collier have alleged fraud on the part of Collier and Smith. It is well stated, that he who alleges fraud must prove it, yet this proof required in cases of fraud may as well be made by circumstantial evidence and the relation of the parties and the condition of things, as well as by the positive proof of the existence of iniquity. It is well known that men, in the commission of fraud, do not go to the house tops to proclaim their intention. It is usually committed in secret, under cover and in darkness, and he who undertakes to unearth it, must take up the various circumstances attending the transaction and make out of these circumstances, evidence convincing to the mind of the court, that the fraud has been committed. In the case of the American Net & Twine Co. vs. Mayo (97 Va. page 182) the court said: "The burden of proving fraud is primarily on him, who charges it, but where indicia of fraud are clearly shown, the burden is shifted on the other side to show the bona fides of the transaction." Not only has a prima facie case of fraud been established in this case, but it seems to us, from the proof that has been introduced, that the transaction which Smith undertook to pan off on the administrator representing this estate is steeped in the very worst iniquity. Smith has produced no evidence to show the bona fides of the transaction, neither has he produced any proof to show that he was able to meet the payments of the notes that he had given.



R.L.Pennington, Admr.)

vs )

Z.P.Smith )

Brief for Plaintiff.

On the 9th day of March, 1903, the plaintiff filed his bill for an injunction against Z.P.Smith, asking that said Smith be restranied from selling and disposing of a stock of goods which plaintiff claims was the partnership property of A.J.Collier & Co., which partnership consisted of A.J.Collier and Z.P.Smith Plaintiff alleges in his bill that, after A.J.Collier was killed on the 2nd day of March, 1903, the said Smith took charge of the entire partnership property and set up sole claim thereto under the pretense that he had purchased the said stock of goods during the life-time of said Collier, and was entitled to the same under the so called purchase . Plaintiff alleges that he demanded an inventory of stock of goods and statement of the condition of the partnership, and that said Smith refused to make any and claimed that he was the sole owner of said stock of goods. Upon the plaintiff's bill an injunction was awarded against said Smith preventing him from disposing of said goods, and a receiver was appointed to take charge of said goods and dispose of them and hold the proceeds subject to the future order of the court in this cause. On the 9th day of July, 1903, the defendant, Z.P.Smith filed his answer to the said bill, in which he states, that on the 20th day of January, 1903, he had purchased said stock of goods from the said A.J.Collier at the invoice price of \$1049.00, and that he had executed to the said Collier on the 28th day of March (the day on which Collier received the fatal wound) notes to the amount of \$1000.00, one of which was made payable six months after date for \$200.00, one for \$200.00 nine months after date, and one for \$600.00 two years after date. E.W. King & Co. and other creditors of A.J.Collier & Co. filed their pe-



titions in the said suit, making said Pennington, administrator, and said Smith defendants to said petitions. Said petitions first alleged that, said Smith and said Collier were conducting a partnership business under the firm name of A.J. Collier & Company, and that, after said Collier was dead, the said Smith undertook to cheat and defraud the estate of A.J. Collier and his creditors out of the assets of the firm by claiming a pretended sale of the goods of Collier to him. They then say that, if mistaken in this part of the allegations of their petitions, that they then allege that Z.P. Smith and A.J. Collier colluded together to defraud, hinder and delay the creditors of the said Collier by entering into a sham deal with reference to the said goods, in which it was agreed that said Smith should take the said goods in his own name and execute to the said Collier sham notes to the amount of the invoice of said debt due and payable at a distant date. The bill of the complainant, the answer of the said Smith, and the petitions of said E.W. King & Co. and other creditors of A.J. Collier & Co. prove the issue that has been made in this case. By decree entered in this cause on the 1st day of July 1903, E.M. Goins was appointed special commissioner to ascertain the indebtedness of A.J. Collier & Co., which he has now done and, according to his report, there is \$999.75 indebtedness out side of the sums paid out by the administrator, which amount to the sum of \$ \_\_\_\_\_, as shown by the report of said administrator filed in this cause. Said complainant, said Smith and said petitioning creditors have taken their respective proofs tending to support their several contentions upon the issue that has been made.

Proof in the Case.

First-by the Administrator--.

The complainant introduces John Gilley, one of the appraisers appointed to appraise the personal estate of the said A.J. Collier, deceased, who states that, Smith, while the appraisment



was being made, went off somewhere and got some notes, which he says that Smith said he got at his house. Witness filed these notes with his deposition and they are the notes referred to in the plaintiff's bill. The witness states that Smith first denied getting any money off of Collier's person after he was shot, except the sum of \$1.22, but that, after he had questioned him severely, Smith said, "If I have to acknowledge to it, I state that I got 15.00 out of his pocket book". The witness further states that on the 29th day of January, 1903, he bought some corn at the store of A.J. Collier & Co. and gave his check payable to A.J. Collier & Co.. He says that at the time he bought the corn, both Smith and Collier were in the store and each selling and trying to sell the stock of goods that was there. He further states that Collier said to him in the presence of Smith that they (that is, Smith and Collier) wanted to sell all their corn; that they were going to move their goods to Appalachia. Witness further states that the sign of "A.J. Collier & Company" was over the door.

The administrator introduced J.P. Collier, who is a brother of A.J. Collier, deceased, who states, that on Monday after his brother was shot. on Saturday, that he asked Smith to close the store and that Smith said to him, that he had bought the goods and had executed some sham notes, so that they could hold the goods and make some more money. Witness states that Smith stated to him, that A.J. Collier was indebt and the notes were given through sham, so that they could hold the goods and make some more money. Witness further states that Smith offered to turn the goods over to him, if he would pay him the three or four hundred dollars, which he had put in. He also states that over the door of the concern was the sign of "A.J. Collier & Company".

The administrator introduced another witness, Mr. R.A. Wood, a merchant. Witness states that he is doing business within



forty feet of the concern of A.J. Collier & Co. and was, at the time that Collier was killed. He states that he helped to invoice the stock of goods that was on hands at the time that the receiver took charge of them, and says they were an old stock, very much run down, had been shifted from place to place, and were not worth the invoice price at which they were set down.

Defendant Smith's Proof.

Defendant Smith introduced M.L. Olinger as a witness, who states that Collier told him that he was thinking of selling out to Smith, and says that Collier asked him if Smith would be all right if Smith's father would sign the notes with him. He says this was in January, 1903. Olinger says that he helped to take an invoice of the stock of goods at the request of Collier, and that the invoice book shows that there was \$1049.85. On cross examination, he states that after the invoice was taken, he saw Collier in the store selling and trying to sell the goods.

Defendant introduced A.P. Reese, who is a brother-in-law of Smith. This witness says, that he was in partnership with Collier from September or October, 1902, until in January, 1903. He says that he bought an interest in the store at four hundred and odd dollars and sold out to Collier for \$75.00 and the return of his notes that he had given for the purchase of said interest and the accounts of about \$40.00. Witness says that, after he sold back to Collier, Collier told him, that while he was at Norton, Va., he had gotten in debt and that his creditors were going to push him for his debts, and, if they did, he would not have anything left, and he was talking of selling at that time to Z.P. Smith. On cross-examination, he further states that Collier stated to him that, unless he would sell out, his creditors would run him to a lot of cost and sell him out.

Defendant introduced Rial Lawson, whose testimony is in regard to a transaction about some eggs and is not material to either



of the issues represented in this case.

Defendant introduced T.B.Thompson, who says that he heard Collier say something about selling out to Smith, and says that he helped him to invoice the stock of goods. He says also that he helped Smith invoice his stock of goods, which he says amounted to the sum of \$490.00. On cross examination, the witness says that Collier told him he owed some bills and was going to sell out.

Deduction from Proof.

Now it is contended by the administrator, that the proof shows that Smith and Collier were partners, and that, after Collier was killed, Smith undertook to defraud Collier's estate by taking sole possession of the goods and executing the three notes mentioned in the bill. The administrator contends that Smith expected, by this course, to be able to obtain possession of the goods on long time, and that, while the notes executed for the purchase price of the goods were maturing, he could dispose of the goods and, being insolvent himself, could thereby appropriate and make use of the whole of the said goods without giving anything at all in return for the goods. The bill alleges that Smith is insolvent, he admits in his answer that he is a poor man, and the proof in the case shows that his obligation is not worth 25¢ on the dollar. The proof, therefore, in the case is that Smith is insolvent and was so at the time that he claimed to have purchased the goods.

Now A.J.Collier's creditors come into the suit and first say the statements of the plaintiff's bill are true and that they adopt the allegations of the said bill as a statement of the facts to be alleged in their petitions. They then make the further statement that, if mistaken in this part of their contention, they then allege that Collier and Smith entered into a collusion together to hinder, delay and defraud the creditors of A.J.Collier by entering into an agreement by which Smith was to pretend to have bought the goods, and to execute sham notes to Collier on long time, so as to



put off the creditors of A.J.Collier. We are sorry to have to admit that there is evidence to support the contention of the creditors of said A.J.Collier that Collier was implicated in the fraud, as well as evidence to support the contention of the administrator. The following facts go to prove that Collier and Smith had entered into a partnership and were, at the date of Collier's death, operating a partnership business with an interest therein in proportion to the amount which each had put into the concern. After the invoice was taken and Smith had moved in his stock of goods, Collier continued in the store just as he had before. John Gilley says that he bought corn at the store and paid A.J.Collier & Co., not A.J.Collier, and he says that Smith and Collier told him that they were going to take their goods to Appalachia. Mr. Olinger says that, after the invoice was made, he saw Collier in the store selling and trying to sell what goods were there. R.A.Wood, a merchant, who did business within forty feet of the store, says that Collier continued to stay in the store upto the time of his being shot. He says, also, that the sign of "A.J.Collier & Company" remained over the door. The notes which Smith had executed to Collier were all in the handwriting of said Smith and were in his possession at the time of Collier's death. Before Smith's stock of goods was put in with the Collier stock, an inventory and invoice was made of that stock. Now, if Smith had bought out Collier, why did the business continue to be run under the name of A.J.Collier & Co? Why was it that they talked of moving their goods to Appalachia? Why was it that corn was bought out of the store and check made payable to A.J.Collier & Co.? Why was it that the notes executed for the purchase price of the goods were in the handwriting of Smith and in his possession and instead of being for the full amount of the invoice price of the goods, were for the even sum of \$1000.00? Why was it that Smith was careful to make out an inventory and invoice of his stock of goods when the two stocks were put together, if he had made an absolute purchase of the Collier



stock. On February 26, 1903, only two days before Mr. Collier received the fatal wound, he addressed a letter to Mr. A.M. Goins, who had for collection a claim against A.J. Collier & Co. in favor of Frank DeLalade, in which he says, "I have been in a close place and trade is dull". These facts fully convince us that there certainly existed a partnership between said Smith and said Collier, and that said Smith undertook to defraud the estate of said Collier after he was dead. There are, however, facts proved in the case, which bear out the contention of the creditors, that both Collier and Smith were implicated in a scheme of fraud to defraud the creditors of A.J. Collier & Co. First, Collier told Thompson that he owed some bills and was going to sell out. Second, A.P. Reese says that in January, 1903, Collier told him that he was in debt and that his creditors were pushing him and he was going to sell out and, if he did not sell out, his creditors would sue him and he would have nothing left. Third, J.B. Collier says that Smith told him that the reason why Collier had sold him the goods was that A.J. Collier was in debt and that the notes were given through sham, so that they could hold the goods and make some more money. Fourth, the notes were executed on six and nine months and two years time.

#### The Law in the Case.

Wait on Fraudulent Conveyances--Sec. 240--says: "It must be remembered that every delay, to which a creditor is subjected in the collection of his debt, is not necessarily fraudulent. Insolvency, as is elsewhere shown, does not deprive a debtor of the right to sell his property, and, if a sale is made in good faith and without any intent to hinder, delay and defraud creditors, the mere fact that it was made upon credit does not require that it should be declared invalid. The court, in Roberts vs. Sheppard says, 'The sale upon credit of part of their property by an insolvent firm, is a circumstance which may be considered with others bearing upon the question of fraudulent intent, but alone does not necessarily establish it.' "



Under the head of "Prima Facie Cases of Fraud, Wait, in the same work above quoted--Sec. 243,-- says, "In Dabney vs Sharpe it is said that a sale of an entire stock in trade to a clerk in the employ of the vendor is colorable or fraudulent, as to the course of the vendor, when the vendee has no means except that he receives ten dollars a week for his services, and where he pays nothing at the time of the sale, but gives his unsecured promissory notes for the whole amount of the purchase money, and no public notice is given of the change, but the business sign remains the same and the vendor is frequently about the premises."

The fact that possession remained with Collier, unless this was a case of partnership, makes out a case of prima facie fraud.

The same authority above quoted, in Sec. 248, sums up the authorities on this subject and says: "The prevailing policy is to consider the absence of a change of <sup>possession</sup> ~~possession~~ as prima facie, or presumptive evidence of fraud." It seems to be a universal doctrine supported by the English cases and the state courts of America and the supreme court of the United States, that retention of the possession of personal property after an absolute sale, is prima facie fraud, as to creditors of the vendor. In the case of Benjamin vs. Madden (94 Va.--page 69) Judge Riley makes this statement: "The retention of the possession of personal property by the vendor after an absolute sale, is prima facie fraud as against creditors of the vendor, but such presumption may be rebutted by proof." In a note appended to the case of Davis vs. Turner in the Va. Repts. Annot., Mr. Michie sums up the authorities on this question on page 423 of the case above referred to, in which he says: "For many years the Virginia decisions following the English case of Edwards vs. Harben and the case of Hamilton vs. Russell (U.S.--1 Cranch-309) seem to have regarded a stated rule that an absolute sale of personalty, the possession of which remains with the vendor is fraud per se."



Mr. Michie then refers to the various cases which support this doctrine. Reference is made to that work for a full statment of all the authorities. In the case of the Mossy Creek Woolen Mill vs. Anderson & Maness reported in 100 Va--442, a case with which this court is perfectly familiar, the court held Anderson and Maness responsible to the creditors of J.T.Kyle, their vendor, when the proof in that case showed that Maness and Glass had taken the stock of goods and paid every cent of the contract price in cash. Yet the circumstance of that case was such, that, while there was no positive proof of the implication of Anderson and Maness in the fraud that was perpetrated by Kyle upon the creditors, yet Anderson and Maness had good reason to believe, from the conduct of Kyle and the price that they were paying for the goods, that Kyle was in debt and it was his purpose to get the proceeds of the sale of the stock of goods in his pocket and leave his creditors without a cent and compel Anderson and Maness to satisfy the said creditors the amount of their several claims. We consider this a much stronger case of fraud proven, because in this case not one single cent of the purchase price of the said goods had been paid, and said Smith, by his own confession, knew that Collier was in debt and that his purpose in selling out, was to place his effects beyond the reach of his creditors. Smith, therefore, became the party to the fraud, and is responsible to the creditors of A.J.Collier & Co. to the full extent of their claims, or at least, until he has accounted to said creditors for the full amount and value of the said stock of goods. Some of these same facts which argue that Collier was implicated in the fraud, which Smith undertook to perpetrate, also argue the existence of a partnership between Smith and Collier, as well as they argue the contention of the creditors, and when the whole evidence is summed up, we believe that the weight and preponderance of the evidence is in favor of the contention which the administrator makes. If such is the case, then Smith should be required to account for all



the merchandise disposed of by him and all the accounts and moneys collected by him and make settlement with the estate of said Collier for such amount as he has received.

Burden of Proof.

The plaintiff has alleged fraud on the part of Smith, and the creditors of Collier have alleged fraud on the part of Collier and Smith. It is well stated, that he who alleges fraud must prove it, yet this proof required in cases of fraud may as well be made by circumstantial evidence and the relation of the parties and the condition of things, as well as by the positive proof of the existence of iniquity. It is well known that men, in the commission of fraud, do not go to the house tops to proclaim their intention. It is usually committed in secret, under cover and in darkness, and he who undertakes to unearth it, must take up the various circumstances attending the transaction and make out of these circumstances, evidence convincing to the mind of the court, that the fraud has been committed. In the case of the American Net & Twine Co. vs. Mayo (97 Va. page 132) the court said: "The burden of proving fraud is primarily on him, who charges it, but where indicia of fraud are clearly shown, the burden is shifted on the other side to show the bona fides of the transaction." Not only has a prima facie case of fraud been established in this case, but it seems to us, from the proof that has been introduced, that the transaction which Smith undertook to pan off on the administrator representing this estate is steeped in the very worst iniquity. Smith has produced no evidence to show the bona fides of the transaction, neither has he produced any proof to show that he was able to meet the payments of the notes that he had given.

Chancery Court



Chas. L. Cummings

But

30 Smith



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON *R. A. Wood, John Gilley*  
*James, H. Collier & John Collier (J. H. Collier's Son)*

*at the law office of R. L. Pennington in the town of Jonesville Va*  
to appear, before the Judge of our Circuit Court of the County of Lee, at the court-house  
~~thereof~~, on the *17<sup>th</sup>* day of *October* 190*3*, to testify and the truth to say  
in behalf of the *Plaintiff*, in a certain matter of controversy in our said court  
before the said Judge depending and undetermined between

*R. L. Pennington admr* Plaintiff, and

*J. P. Smith* Defendant . And this *they*  
shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house the *5<sup>th</sup>* day of  
*October* 190*3*, and in the 12*8<sup>th</sup>* year of the Commonwealth.

*A. B. Mursey Clerk*



800

FORM No. 204.

*P. L. Beattyton D. C.*

vs.

SUBPOENA

FOR

WITNESS.

*J. P. Smith.*

Court,

the *17<sup>th</sup>* day of

190

*Executed Oct 15-1903  
by summoning the  
within witness  
D. B. Byington D. C.  
for M. J. Milburn  
S. L. C*



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON

*James J. Orr* and  
*Morgan S. Orr*, *W.P. Wood* and *R.A. Wood*

*at the Law Office of R. L. Pennington*  
to appear before the Judge of our Circuit Court of the County of Lee, at the court-house  
thereof, on the *12<sup>th</sup>* day of *February* 190*4*, to testify and the truth to say  
in behalf of the *Petitioners*, in a certain matter of controversy in our said court  
before the said Judge depending and undetermined between *R. L. Pennington*  
*Admr* Plaintiff, and  
*and G. P. Smith*

Defendant . And this

shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, *A. B. Munsey* Clerk of our said court, at the court-house the *8<sup>th</sup>* day of

*February* 190*4*, and in the 12 *8<sup>th</sup>* year of the Commonwealth.

*A. B. Munsey* Clerk.



R. L. Pennington

SUBPOENA

FOR

WITNESS.

vs.

G. P. Smith

Circuit Court,

the 12th day of Feb

1904

executed by summons  
the within  
witness this  
Feb the 10. 1904  
J B Hughes D A  
for W M Ball  
A L C

Made sworn J. over 74 ch  
and sworn A over 74 ch  
for one day's travel and mileage



To Z.P.Smith,

Take notice that I shall, on the 17th day of October, 1903,  
at at the law office of R.L.Pennington in the town of Jonesville, Va.,

between the hours of 8 A. M. and 8 P. M., on that day, proceed to take the depositions  
of John Collier ~~and others~~ and others, to be read in evidence in behalf,  
in a certain suit depending in the Circuit Court court for the County  
of Lee wherein you are Defendant  
and I am plaintiff.

and if from any cause, the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

Very respectfully,

By Pennington Bros. attys.

*R. L. Pennington*  
Admr. of the estate of A.J. Collier.



504

FORM NO. 404.

*R. R. Hampton & Edgar*

vs.

NOTICE TO TAKE  
DEPOSITIONS.

*Z. P. Smith*

*P. Bros -*

p. q.

*Executed Oct 9-1900  
by delivering a true  
copy of the within  
subscribed to Z. P.  
Smith D. B.  
Byington D. S.  
For W. J. Milburn  
S. L. C.*



CERTIFICATE OF  
ORDER OF PUBLICATION.

9  
We, ~~C. S. Cox~~ and C. R. Sprinkle,  
Editors of the SOUTHWEST VIRGINIAN,  
a weekly newspaper published at Jones-  
ville, Lee county, Virginia, do hereby  
certify that the annexed notice was  
published in said paper once a week  
for four successive weeks, commenc-  
ing on the 6th day of

August, 1903.

C. R. Sprinkle EDITOR.

FEE, 7.40

Free \$7.40

COMMISSIONER'S NOTICE.

R. L. Pennington, Adm'r. &c., }  
vs. } In Chy.  
Z. P. Smith, et. al.

In the Circuit Court for Lee County,  
Virginia.

TO WHOM IT MAY CONCERN:

TAKE NOTICE that, pursuant to de-  
cree in the above cause of July 10th, 1903,  
I shall, on Sept. 1st, 1903 at my office in the  
town of Jonesville, proceed to inquire into  
and make statements concerning the mat-  
ters and things mentioned in said decree,  
and thereby referred to me as special com-  
missioner in said cause. Especially am I  
directed by said decree to convene the  
creditors of A. J. Collier, both in his indi-  
vidual capacity and as doing business un-  
der the firm name of A. J. Collier & Co.,  
and am directed to make separate state-  
ment of the different classes of creditors  
against A. J. Collier, and also to ascertain  
and report whether or not any debts  
against A. J. Collier & Co., in the mercan-  
tile business in controversy, were incurred  
after the 20th, day of January, 1903. I am  
also directed to ascertain and report the  
assets of the estate of A. J. Collier, outside  
of the claim in controversy in this cause  
between R. L. Pennington, Adm'r., vs- Z.  
P. Smith.

I am directed to publish notice of the  
time and place of my sitting for four weeks  
in some newspaper published in Lee coun-  
ty, which shall be in lieu of personal notice  
of my sitting. This Aug. 1st, 1903.

A. M. GOINS,  
Special Commissioner.



R. L. Plummerington Admrs

vs. { In Chy

J. P. Smith et al

Printer's Certificate  
Order of Publication

Fee \$7.40